RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM	-the abbreviation to identify the adopting agency
01	-the *State Register* issue number
96	-the year
00001	-the Department of State number, assigned upon receipt of notice.
E	-Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Shell Eggs; Acidified Foods

I.D. No. AAM-40-18-00021-E
Filing No. 130
Filing Date: 2019-02-12
Effective Date: 2019-02-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of Part 261; addition of new Part 261 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 214-b

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The current Part 261, which gives the Department authority to inspect acidified food and egg shell producers, processors and manufacturers based on 21 CFR Parts 114 and 118, will lapse after September 18, 2018. This rulemaking repeals the current Part 261, and re-adopts portions of the current Part 261 to allow the Department to continue to inspect and regulate these entities, that produce and manufacture foods to be consumed by the general public to ensure that these establishments continue to comply with public health and safety minimum requirements. In re-adopting this portion, the Department is not amending the previously promulgated requirements, but instead, is preventing a lapse in the current Part 261.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of these rules is necessary for the preservation of public health and the general welfare and that compliance with Section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Shell Eggs; Acidified Foods.

Purpose: To continue regulatory powers in connection with acidified foods and shell eggs used in foods for human consumption.

Text of emergency rule: Part 261 of 1 NYCRR is repealed and a new Part 261 is added thereto to read as follows:

PART 261

SHELL EGGS; ACIDIFIED FOODS

§ 261.1 Shell eggs

(a) Except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner of agriculture and markets, the commissioner hereby adopts the current Federal regulation as it appears in title 21 of the "Code of Federal Regulations," Part 118 (revised as of April 1, 2013; U.S. Government Printing Office, Washington, DC 20402), at pages 300-310, entitled "Production, Storage, and Transportation of Shell Eggs."

(b) A copy of title 21 of the Code of Federal Regulations containing part 118 is maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, NY 12231, and is available for public inspection and copying during regular business hours.

§ 261.2 Acidified foods

(a) Except where in conflict with the statutes of this State or with rules and regulations promulgated by the commissioner of agriculture and markets, the commissioner hereby adopts the current Federal regulation as it appears in title 21 of the "Code of Federal Regulations," Part 114 (revised as of April 1, 2013; U.S. Government Printing Office, Washington, DC 20402), at pages 291-297, entitled "Acidified Foods."

(b) A copy of title 21 of the Code of Federal Regulations containing part 114 is maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, NY 12231, and is available for public inspection and copying during regular business hours.

§ 261.3 Exclusions

(a) The following establishments, businesses and operations are excluded from coverage under this Part:

(1) Establishments covered by Part 273 of this Title.

(2) Those businesses operating subject to Federal or State meat and poultry inspection laws and/or the rules and regulations promulgated thereunder.

(3) Those establishments now or in the future to be covered by specific rules and regulations promulgated pursuant to the Agriculture and Markets Law of the State of New York, including but not limited to the following Parts of this Title: Parts 16, 32, 36, 240, 256, 258, 270 and 275.

(b) The commissioner, however, may promulgate and adopt special or specific rules and regulations when he or she believes it necessary to cover or control the operations excluded by the provisions of subdivision (a) of this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. AAM-40-18-00021-EP, Issue of October 3, 2018. The emergency rule will expire April 12, 2019.

Text of rule and any required statements and analyses may be obtained from: John Luker, Asst. Director, Div. of Food Safety & Inspection, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-5382, email: john.luker@agriculture.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Agriculture and Markets Law ("AML") section 16 authorizes the Commissioner of Agriculture and Markets ("Commissioner") to execute the laws of the State relative to the marketing and distribution of food. AML section 18 authorizes the Commissioner to enact rules necessary for the exercise of his power to execute such laws. AML section 214-b allows the Commissioner to promulgate regulations that aid in the prevention of the sale and distribution of misbranded or adulterated food.

2. Legislative objectives:

The proposed rule continues previously existing authority to regulate entities that produce, process, and manufacture acidified food and shell eggs. The proposal accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help protect the food supply of the State from adulteration by requiring that foods be produced, processed and manufactured in a manner that will help to ensure that such foods are and remain wholesome.

3. Needs and benefits:

On September 18, 2018, the Department's authority to effectively regulate, inter alia, manufacturers of acidified foods and producers and processors of shell eggs was continued through the proposed rule, adopted as an emergency measure, preventing a lapse in the current rule. The proposed rule is needed to reduce the number of foodborne illnesses throughout the State. The State's public health and safety will benefit by the adoption of the proposed rule. The proposed rule will continue to incorporate provisions of the federal regulations which establish good manufacturing practice standards applicable to acidified foods and shell eggs designed to ensure that such foods are not adulterated and do not contribute to foodborne illness.

Since the proposed rulemaking will continue to help reduce the threat of outbreaks of foodborne illnesses, consumers will benefit in the adoption of the federally established general manufacturing practices.

4. Costs

a. Costs to regulated parties:

None; the proposed rule does not add any additional costs to regulated parties which did not previously exist.

b. Costs to State and local governments:

None; the proposed rule does not add any additional costs to state and local governments which did not previously exist.

5. Local government mandates:

None; the proposed rule does not add any additional local government mandates which did not previously exist.

6. Paperwork:

None.

7. Duplication:

The proposed amendments do not duplicate existing State requirements, nor establish any duplicative, overlapping or conflicting requirements. The federal regulations are incorporated to authorize the Department to require facilities within New York State to comply with the standards established by federal regulations.

8. Alternatives:

The Department did not consider any alternatives to the proposed rule. As set forth above, the Department is extending the applicability of the current provisions, and, to date, has not seen any reason to modify the current standards established in the proposed rulemaking.

9. Federal standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule:

The proposed rule was effective on September 18, 2018, the date that it was filed as an emergency rule; regulated parties were required to comply therewith on that date.

Regulatory Flexibility Analysis

The proposed rule will repeal Part 261 of 1 NYCRR and "readopt" three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11, which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new reporting, recordkeeping, or other compliance requirements on small businesses or local governments; nor imposes any adverse impact on small businesses or local governments that may not already exist, and accordingly, no regulatory flexibility analysis has been prepared in connection with the proposed rule, pursuant to SAPA section 202-b (3)(a).

Rural Area Flexibility Analysis

The proposed rule will repeal Part 261 of 1 NYCRR and "readopt" three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11 which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new regulatory burden upon regulated parties and will not, therefore, have an adverse impact upon rural areas because it imposes no reporting, recordkeeping or other compliance requirements on public or private entities in rural areas that may not already exist, no rural area flexibility has been prepared in connection with the proposed rule, pursuant to SAPA section 202-bb(4)(a).

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will repeal Part 261 of 1 NYCRR and "readopt" three sections currently set forth therein; i.e., sections 261.8, 261.9, and 261.11 which incorporate by reference certain federal regulations governing the handling and/or manufacture of shell eggs and acidified foods respectively. The proposed rule imposes no new regulatory burden upon regulated parties and will not, therefore, have an adverse impact upon jobs.

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

To Implement New York State's Every Student Succeeds Act (ESSA) Plan

I.D. No. EDU-19-18-00006-E

Filing No. 127

Filing Date: 2019-02-12

Effective Date: 2019-02-12

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 100.2(ff), (m), 100.18, 100.19, Part 120; and addition of section 100.21 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 112, 207, 210, 215, 305, 309, 3713; Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6301 et seq. (Public Law, 114-95, 129 STAT. 1802)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: On December 10, 2015, the Every Student Succeeds Act (ESSA) was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old Elementary and Secondary Education Act, which provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship. New York State receives approximately $1.6 billion annually in funding through ESSA.

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018. Subsequently, the Department met regularly with the USDE to provide clarifications on the plan. On January 17, 2018, the USDE approved the State's plan. In January 2018, the Department provided the Board of Regents with an update on the approved plan and in March 2018, the Department provided an update regarding the financial transparency requirements related to ESSA. In April 2018, the Department provided Board of Regents with a detailed summary of the proposed amendment and the Board of Regents voted to authorize Department staff to publish the proposed amendment in the State Register for the 60-day public comment period so that the Department had an opportunity to receive as much public comment as possible before adoption as an emergency rule for the 2018-2019 school year, as required under ESSA.

In order to implement the State's USDE approved ESSA Plan and to prepare for implementation of the plan beginning with the 2018-19 school year, a new section 100.21 and amendments to Commissioner's Regulations sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 were made to align the Commissioner's Regulations with the approved ESSA plan, relating to New York State's updated accountability system.

A Notice of Proposed Rulemaking was published in the State Register

on May 9, 2018 and based on comments from the field, revisions were made to the proposed amendment. As a result, a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 18, 2018. Based on comments received during the public comment period on the revised rule making, the Department made further revisions to the regulation and a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 3, 2018. A Notice of Revised Rulemaking will also be published on December 26, 2018. Because the Board of Regents meets at scheduled intervals, the March 2019 Regents meeting is the earliest the proposed rule could be presented for adoption, after expiration of the 45-day public comment period required under the State Administrative Procedure Act for a revised rulemaking. However, since the 2018-2019 school year began on July 1, 2018 emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the June 2018 Regents and the revisions adopted at the September and December 2018 Regents meetings remain continuously in effect until the rule can be adopted as a permanent rule in order to timely implement New York State's approved ESSA plan, so that school districts may timely meet school/school district accountability requirements for the 2018-2019 school year and beyond, consistent with the approved ESSA plan and pursuant to statutory requirements. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its March 2019 meeting.

Subject: To implement New York State's Every Student Succeeds Act (ESSA) plan.

Purpose: Implement NY's USDE-approved ESSA plan and to comply with the provisions of the Elementary and Secondary Education Act of 1965.

Substance of emergency rule (Full text is posted at the following State website: http://www.counsel.nysed.gov/rulesandregs): The Commissioner of Education proposes to amend sections 100.2(ff), 100.2(m), 100.18, 100.19 and Part 120 of the Regulations of the Commissioner of Education relating to Relating to the implementation of the State's Approved Every Student Succeeds Act (ESSA) Plan. The following is a summary of the proposed rule:

The proposed amendment to subdivision 100.2(ff) relates to the enrollment of youth released or conditionally released from residential facilities. This amendment clarifies the existing requirement that districts designate an employee(s) to be the transition liaison(s) with residential facility personnel, parents, students, and State and other local agencies for the purpose of facilitating a student's effective educational transition into, between, and out of such facilities to ensure that each student receives appropriate educational and appropriate supports, services, and opportunities; and this amendment also provides an overview of the duties of the liaison(s).

The proposed amendment to subdivision 100.2(m) relates to requirements for the New York State report card for schools and districts. This amendment updates the information to be provided in report cards to align with the provisions of ESSA and requires local educational agencies (LEAs) to post the local report cards on their website, where one exists, to satisfy ESSA's local report card requirements. If an LEA does not operate a website, the LEA must provide the information to the public in another manner determined by the LEA.

The proposed amendments to 100.18 clarify that this section, which contains provisions relating to implementation of New York's approved ESEA flexibility waiver, only applies to accountability designations made prior to July 1, 2018, except as otherwise provided in the new section 100.21.

In order to implement the State's approved ESSA plan, the proposed amendments to section 100.19 clarify that Failing Schools means schools that have been identified as Priority Schools and/or Comprehensive Support and Improvement Schools (CSI) for at least three consecutive years. (See Attachment A for criteria for identification of a Comprehensive Support and Improvement School.) These amendments also clarify that beginning with the 2018-19 school year, removal from receivership will be based upon a school's status as a CSI rather than as a Priority School.

The proposed creation of section 100.21 implements the new accountability and support and interventions of the State's approved ESSA plan commencing with the 2018-2019 school year. Such provisions shall include, but not be limited to, the following:

- Subdivision (a) sets forth an applicability clause which says that section 100.21 supersedes paragraphs (p)(1) through (11) and (14) through (16) of section 100.2 and section 100.18, which are the provisions of Commissioner's Regulations that were in place under the No Child Left Behind Act (NCLB) and the Department's Elementary and Secondary Education Act (ESEA) flexibility waiver, and that the new section 100.21 shall apply in lieu of such provisions during the period of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, and any revisions and extensions thereof, except as otherwise provided in section 100.21. If a provision of section 100.2(p) or of section 100.18 conflicts with section 100.21, the provisions of section 100.21 shall prevail.
- Subdivision (b) defines various terms, which are divided into general definitions, definitions related to school and district accountability, definitions related to school and district accountability designations, and definitions related to interventions for designated schools and districts to implement the new accountability system in New York State's approved ESSA plan.
- Subdivision (c) outlines the procedures and requirements for registration of public schools, which remain the same as under the previous accountability regulations.
- Subdivision (d) relates to the requirements for the registration of public schools.
- Subdivision (e) provides that, commencing with the 2017-2018 school year results, the Commissioner will annually review the performance of all public schools, charter schools, and school districts in the State. The Commissioner shall determine whether such public school, charter school or school district shall be identified for Comprehensive Support and Improvement (CSI), Targeted Support and Improvement (TSI), or identified as a Target District in accordance with the criteria set forth in subdivision (f) of the regulation.
- Subdivision (f) specifies the differentiated accountability methodology by which schools will be identified as either CSI (which will be identified every three years beginning with the 2018-2019 school year using 2017-2018 school year results) or TSI (which will be identified annually beginning with the 2018-2019 school year), and the methodology for identifying Target Districts. This section describes how six indicators (composite performance, student growth, combined composite performance and growth, English language proficiency, academic progress, and chronic absenteeism) are used in the methodology for identification of elementary and middle schools. This section also details how seven indicators (composite performance; graduation rate; combined composite performance and graduation rate; English language proficiency; academic progress; chronic absenteeism; and college, career, and civic readiness) are used in the methodology for identifying high schools. This subdivision also explains how each of these indicators is computed, how these computations are converted into a Level 1-4 for each accountability group for which a school or district is accountable, and how these levels assigned to the accountability groups are used to determine whether a school will be identified as in Good Standing, TSI, or CSI, and whether a district will be identified as a District in Good Standing or a Target District. This subdivision also contains provisions regarding the identification of high schools for CSI based on graduation rates below 67% beginning with 2017-18 school year results. In addition, this subdivision contains provisions regarding the identification of TSI schools for additional support as required by ESSA if an accountability group for which a school is identified performs at a level that would have caused the school to be identified as CSI if this had been the performance of the "all students" group.
- Subdivision (g) provides that preliminarily identified CSI and TSI schools and Target Districts shall be given the opportunity to provide the Commissioner with any additional information concerning extenuating or extraordinary circumstances faced by the school or district that should be cause for the Commissioner to not identify the school as CSI or TSI or the district as a Target District.
- Subdivision (h) establishes the public notification requirements upon receipt of a designation of CSI or TSI school or a Target District.
- Subdivision (i) specifies the interventions that must occur in schools identified as CSI or TSI, as well as districts identified as Target Districts. This section describes the requirements for identified schools as they relate to parental involvement, participatory budgeting, school comprehensive education plans, and school choice. This subdivision also describes the increased support and oversight that schools that fail to improve will receive. This subdivision also outlines the interventions for schools that, beginning with 2017-18 and 2018-19 school year results, has a Weighted Average Achievement Level of 1 or 2 and that fails for two consecutive years to meet the 95% participation rate requirement for annual state assessments for the same accountability group for the same accountability measure and are not showing improvement in the participation rate for that accountability group. This subdivision also specifies the support that districts must provide to a school that is not CSI or TSI but has performed at Level 1 for an accountability group for an accountability measure.
- Subdivision (j) establishes the criteria for a school's or a district's removal from an accountability designation.
- Subdivision (k) provides the criteria for the identification of schools for public school registration review. Under this subdivision, the Commissioner may place under preliminary registration review any school identified for receivership; any school that is identified as CSI for three consecutive years; and any school that has been identified as a poor learning environment. Also, under this subdivision, a school under registration review shall also be identified as a CSI school, and subject to all the requirements of that designation.

• Subdivision (l) specifies the process by which the Commissioner will place a school under registration review; and the required actions of the district and the school related to the designation. This subdivision also describes the requirements for receivership schools that have also been identified for registration review.

• Subdivision (m) specifies the criteria and process for removal of schools from registration review, school phase-out or closure.

The proposed amendments to Part 120 update provisions in the existing regulations pertaining to the sunsetting of No Child Left Behind requirements regarding highly qualified teachers and provide for the continuation under ESSA of provisions pertaining to persistently dangerous schools and unsafe school choice and updates to public school choice provisions.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-19-18-00006-P, Issue of May 9, 2018. The emergency rule will expire April 12, 2019.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Summary of Regulatory Impact Statement (Full text is posted at the following State website: http://www.counsel.nysed.gov/rulesandregs):

1. STATUTORY AUTHORITY:

Ed.L.§ 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Ed.L.§ 112(1) authorizes Commissioner to require schools and school districts to facilitate the prompt enrollment of children who are released or conditionally released from residential facilities.

Ed.L.§ 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on the Department.

Ed.L.§ 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Ed.L.§ 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Ed.L.§ 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

Ed.L.§ 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

Ed.L.§ 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

Ed.L.§ 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.(Public Law 114-95, 129 STAT.1802).

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement New York's approved ESSA plan and to comply with the provisions of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

3. NEEDS AND BENEFITS:

On December 10, 2015, ESSA was signed into law by President Obama. This bipartisan measure reauthorized the 50-year-old ESEA, which provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship. New York State receives approximately $1.6 billion annually in funding through ESSA.

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018. On January 17, 2018, the USDE approved the State's plan. In April 2018, the Department provided the Board of Regents with a description of the draft regulatory terms and the Board directed the Department to finalize the draft regulatory terms for publication in the State Register.

The rule will ensure a seamless transition to the revised accountability plan as authorized under the approved ESSA plan, and provide school districts with the opportunity to demonstrate improvements by creating improvement plans that address the needs and resource issues found in identified schools.

For the complete Regulatory Impact Statement please visit the following website: http://www.counsel.nysed.gov/rulesandregs

4. COSTS:

Cost to the State: The proposed rule does not generally impose any new costs beyond those consistent with the provisions of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

Costs to local government: The rule does not generally impose any new costs beyond those consistent with the provisions of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

Based upon the requirements described in the rule to implement certain activities based upon a school or district's accountability status, there may be some associated costs. These activities, include, but are not necessarily limited to, annual notifications of accountability status; participation in comprehensive needs assessments; conduct of parent, staff and student surveys; and development and implementation of improvement plans. For school districts with schools receiving under Titles I, IIA or III, these funds may be used to pay the associated costs. CSI schools that fail to show progress on their Annual Achievement Progression targets for two consecutive years will be required to enter into a partnership with a BOCES, Regional Bilingual Education Resource Network, Teacher Center or other Regional Technical Assistance Center, or other technical assistance provider as determined by the Commissioner to support the implementation of the Comprehensive Education Plan. Depending on the nature of such partnership, and whether such partnership already exists, a school district may incur costs to implement this provision of the regulations.

In some instances, school districts newly identified as Target Districts with schools that are designated as CSI or TSI that do not receive Title I funding may incur costs. These costs will generally be limited to the cost of site visits and implementation of any elements of District Comprehensive Education Plans and Comprehensive Education Plans that involve activities that are in addition to the district's or the school's regular educational program and that the district chooses not to fund through reallocation of existing resources. However, it is anticipated that non-Title I schools will be eligible to receive federal 1003 School Improvement Grants that can be used to fund these activities.

Districts that have schools that fail to meet the 95% participation rate requirements must develop a participation rate improvement plan, which in some cases beginning in the 2021-22 school year shall include partnering with a BOCES or other technical assistance provider to conduct a participation rate audit and for schools that fail to meet certain conditions, to update such participation rate improvement plan. Because these partnerships will likely vary significantly in cost based on the number of schools for which a plan is required no estimate can be made at this time regarding required costs. Similarly districts that have schools that will be closed or phased out as a consequence of these regulations may incur costs in developing and implementing a closure or phase out plan.

In other instances, school districts and their schools will be designated as in Good Standing, when under the present accountability system these school districts and schools might otherwise have been designated as Priority, Focus or Local Assistance Plan schools. In these cases, school districts may incur cost savings as they will no longer be required to participate in site visits or in the other previously required interventions for districts and schools with such designations. In addition, a number of previous requirements for schools identified as Priority or Focus have been reduced or eliminated, thereby providing districts with increased flexibility in use of funds. For example, the current requirement for Title I Schools that are designated as Priority and Focus Schools to offer public school choice has been replaced by a substantially more limited public school choice program for a subset of Comprehensive Support and Improvement Schools.

Because of the number of school districts and schools involved, and the fact that the allowable services and activities to be provided will vary greatly from district-to-district, as well as school-to-school, depending on the school and district designation, the district's choices, and the needs presented in each school, a complete cost statement cannot be provided. No additional costs have been identified with respect to the implementation of the updated accountability system, given the similarities in current requirements and an inability to determine differences aside from those in respect to depth of focus.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

5. LOCAL GOVERNMENT MANDATES:

The rule is necessary to assist school districts to be able to meet the provisions of New York's approved ESSA plan. The proposed regulation will require districts with schools identified as CSI or TSI to make significant changes to the educational programs. See the response to Question #3, Needs and Benefits.

6. PAPERWORK:

The proposed rule generally contains paperwork requirements consistent with those in existing regulations and does not generally impose any new paperwork requirements beyond those consistent with the above statutory authority and the provisions of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802). For further information please see the above response to Question #3, Needs and Benefits.

7. DUPLICATION:

The rule does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

After an extensive, 18-month long public engagement process, the Department, with Board approval, submitted New York State's ESSA plan to the USDE for review on September 17, 2018 which was approved on January 17, 2018. The proposed rule is necessary conform Commissioner's Regulations to New York's approved ESSA plan.

9. FEDERAL STANDARDS:

The rule is necessary to conform regulations to New York's approved ESSA plan and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20U.S.C.§ 6301 et seq. (Public Law 114-95, 129 STAT.1802).

10. COMPLIANCE SCHEDULE:

It is anticipated that parties will be able to timely implement the rule's requirements beginning with its effective date.

Regulatory Flexibility Analysis

A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 18, 2018. A second Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 3, 2018. A Notice of Emergency Adoption was published in the State Register on November 21, 2018. A Notice of Revised Rule Making was published in the State Register on December 26, 2018 and a Notice of Emergency Adoption was published in the State Register on January 2, 2019. However, no revisions are required to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments published on October 3, 2018.

Rural Area Flexibility Analysis

A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 18, 2018. A second Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 3, 2018. A Notice of Emergency Adoption was published in the State Register on November 21, 2018. A Notice of Revised Rule Making was published in the State Register on December 26, 2018 and a Notice of Emergency Adoption was published in the State Register on January 2, 2019. However, no revisions are required to the previously published Rural Area Flexibility Analysis published on October 3, 2018.

Job Impact Statement

A Notice of Proposed Rulemaking was published in the State Register on May 9, 2018. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on July 18, 2018. A second Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 3, 2018. A Notice of Emergency Adoption was published in the State Register on November 21, 2018. A Notice of Revised Rule Making was published in the State Register on December 26, 2018 and a Notice of Emergency Adoption was published in the State Register on January 2, 2019. However, no revisions are required to the previously published Job Impact Statement published on October 3, 2018.

Assessment of Public Comment

(Comments received through January 31, 2019)

*Note: A Notice of Revised Rule Making was published in the State Register on December 26, 2018 and a Notice of Emergency Adoption was published in the State Register on January 2, 2019. This Assessment of Public Comment includes comments received after January 2, 2019 until January 31, 2019.

1. COMMENT:

Commenter echoed previously received comments and expressed concern relating to participation rate and parental rights.

DEPARTMENT RESPONSE:

Please see response to Comment #8 in the previously published Assessment of Public Comment, published in the State Register on October 3, 2018.

2. COMMENT:

Commenter expressed concern related to the differing costs for dual enrollment in community college courses borne by students who reside in neighboring districts.

DEPARTMENT RESPONSE:

These comments are outside the scope of the regulations. Therefore, no response is necessary.

NOTICE OF ADOPTION

Limited Extensions and Program Requirements for Certain Career and Technical Education Teachers

I.D. No. EDU-44-18-00006-A

Filing No. 128

Filing Date: 2019-02-12

Effective Date: 2019-02-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 52.21 and 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 205, 207, 3001, 3004 and 3009

Subject: Limited extensions and program requirements for certain career and technical education teachers.

Purpose: Creation of an extension for holders of the Career and Technical Education Certificate to Teach Grades 5 and 6.

Text or summary was published in the October 31, 2018 issue of the Register, I.D. No. EDU-44-18-00006-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making in the State Register on October 31, 2018, the State Education Department (SED) received the following comment on the proposed amendments. Below is an assessment of the public comment received.

1. COMMENT:

Commenter expressed support for the proposed amendments to allow Career and Technical Education (CTE) teachers that currently teach in grades 7–12 to be eligible for an extension to teach in specific CTE certificate titles in grades 5 and 6 if they also complete middle childhood developmental level coursework and noted that subject area teachers have been afforded this ability.

Further, the Commenter stated that the proposed amendments will provide individual school districts with added flexibility to schedule the middle level CTE requirement depending on each district's particular arrangements.

Commenter concluded by stating that the Department's decision to maintain the middle level CTE requirement with some variation, and to provide flexibility with respect to teaching for different grade configurations, is a recognition of its commitment to CTE instruction.

DEPARTMENT RESPONSE:

No response is necessary because the comment is supportive.

NOTICE OF ADOPTION

Addition of Certificate Titles Eligible for Grade Level Extensions, Limited Extensions, and a Statement of Continued Eligibility

I.D. No. EDU-44-18-00007-A

Filing No. 125

Filing Date: 2019-02-12

Effective Date: 2019-02-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 80-3.15 and 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 210, 215, 305, 3001, 3004 and 3009

Subject: Addition of Certificate Titles Eligible for Grade Level Extensions, Limited Extensions, and a Statement of Continued Eligibility.

Purpose: Creates limited extensions and continued eligibility in the core subject areas for teachers of students with disabilities.

Text or summary was published in the October 31, 2018 issue of the Register, I.D. No. EDU-44-18-00007-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

English Language Learner Grade Span Requirement

I.D. No. EDU-47-18-00010-A

Filing No. 131

Filing Date: 2019-02-12

Effective Date: 2019-02-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 154-2.3(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 315, 305, 2117, 2854(1)(b) and 3204

Subject: English Language Learner Grade Span Requirement.

Purpose: To provide a one-year renewable waiver to expand the allowable grade span for ENL and BE classes to three contiguous grades.

Text or summary was published in the November 21, 2018 issue of the Register, I.D. No. EDU-47-18-00010-EP.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-2183, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Following the public comment period required under the State Administrative Procedure Act, the Department received the following comments:

1. COMMENT:

One commenter expressed the position that the regulation puts students at a disadvantage by grouping them in more than two continuous grades, on account of both developmental and instructional appropriateness. The commenter felt that the skills covered across three grade spans would be too broad to cover in a single classroom.

DEPARTMENT RESPONSE:

The Department agrees that it is critical to provide instruction that is both developmentally and instructionally appropriate. The Department has limited the waiver's availability to districts with low English Language Learner enrollment of thirty or less students district-wide. Districts seeking the waiver will be required to provide key demographic information such as the total number and percentage of ELLs in the district as well as in particular schools, and the number of available certified BE and English for speakers of other languages ("ESOL") teachers to serve them. Districts will also be required to submit a justification explaining how they will ensure that all ELLs receive appropriate support if a waiver is granted, as well as the efforts the district has made to comply with the two grade span requirement of section 154-2.3(i) given its current staffing.

The Department also issued an accompanying guidance document entitled "School District Justification to Expand the Maximum Allowable Grade Span to Three Contiguous Grades in 1-12 English as a New Language (ENL) or Bilingual Education (BE) Classes." Contained in this guidance are questions and answers regarding which districts qualify for the waiver, best practices and guidance regarding instructional grouping practices, and recommended solutions for common challenges. The Department is also available for technical assistance and support as districts implement this temporary waiver.

2. COMMENT:

Two commenters expressed support for the regulation, on account of benefits to smaller districts and schools. One commenter expressed that the regulation will help smaller schools which may not have sufficient resources to meet the two grade span requirement. The commenter further expressed that developmental differences may not be as great in higher grades and that differences in instructional needs can be accommodated by differentiation of lesson plans. Another commenter observed that in small districts, English as a New Language teachers often have to work in more than one school or even more than one district and across many grades, in which case it can be instructionally beneficial to group students based on proficiency across multiple grades.

DEPARTMENT RESPONSE:

It is not necessary for the Department to respond as these comments are in support of the proposed regulation.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Set Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines

I.D. No. ENV-09-19-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of Subpart 227-3 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105

Subject: Set nitrogen oxide (NOx) emission rate limits for simple cycle and regenerative combustion turbines.

Purpose: Reduction of nitrogen oxide (NOx) emissions from simple cycle and regenerative combustion turbines.

Public hearing(s) will be held at: 11:00 a.m., May 6, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 11:00 a.m., May 13, 2019 at SUNY Stony Brook, 50 Circle Rd., Rm. B02, Stony Brook, NY; 11:00 a.m., May 14, 2019 at Department of Transportation, One Hunter's Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: The full text for this rule appears in the Appendix of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: May 20, 2019.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: http://www.dec.ny.gov/ regulations/ propregulations.html# public): The New York State Department of Environmental Conservation (DEC) is proposing 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emissions from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help to address Clean Air Act (CAA) requirements, ozone nonattainment and protect the health of New York State residents. This proposal is only applicable to simple cycle and regenerative combustion turbines. This is not a mandate on local governments. It applies to any entity that owns or operates a subject source.

STATUTORY AUTHORITY

The statutory authority for the promulgation of Subpart 227-3 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure the protection of the public health and welfare, the natural resources of the State, physical property, and integrating industrial development with sound environmental practices.

NEEDS AND BENEFITS

In March of 2008, the United States Environmental Protection Agency (EPA) lowered the eight-hour ozone National Ambient Air Quality Standard (NAAQS) from 0.08 parts per million (ppm) to 0.075 ppm.[1] Subsequently, on October 1, 2015, the EPA signed a rule that lowered this standard to 0.070 ppm.[2] Ozone NAAQS attainment status is demonstrated by measurements recorded from a monitoring network set up across the United States.

EPA designated the New York-Northern New Jersey-Long Island metropolitan area (New York metropolitan area, or NYMA) as a "marginal" nonattainment area for the 2008 ozone NAAQS effective July 20, 2012. On November 14, 2018 EPA proposed to reclassify the NYMA to "serious" nonattainment.[3] The area was designated as "moderate" nonattainment for the 2015 ozone NAAQS.[4] NYMA monitors are currently reporting ozone concentrations of 0.083 ppm, well above the standard.

Simple cycle and regenerative combustion turbines (SCCTs) sometimes referred to as peaking units, run to meet electric load during periods of peak electricity demand. They typically run on hot summer days when there is a strong likelihood of high ozone readings. Many peaking units in New York have high NOx emission rates, are inefficient and are approaching 50 years of age. It is difficult to install after-market controls on most of these units because of their age and site limitations.

New York must fulfill its CAA "good neighbor" obligations which require states to include adequate measures in its state implementation plans (SIPs) prohibiting emissions of air pollutants "in amounts which will…contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to" a NAAQS. In addition, New York must meet the 2008 and 2015 ozone NAAQS, for which the New York-Northern New Jersey-Long Island, NY-NJ-CT area is in nonattainment.

Because high ozone days significantly impact human health in the NYMA and because older units significantly contribute on these days, DEC assessed the 99 high ozone days between 2011 and 2017. Analysis shown in Table 1.

	NOx (tons)	Heat Input (MMBtu)	Gross Load (MWh)
Pre-1986 SCCT*	1,849	7,193,633	580,109
Post-1986 SCCT*	73	6,908,887	1,040,831

*Values are the sum of high ozone days 2011 - 2017

Table 1: NOx emissions from NY SCCTs.[5]

As demonstrated in Table 1, on high ozone days newer SCCTs produced 64 percent of the electricity generated from SCCTs while emitting only 4 percent of NOx emissions from these sources[6].

If the older sources were replaced with newer sources, the total NOx emissions from those older sources on the 99 high ozone days assessed would drop from the reported 1,849 tons to between 40 and 60 tons depending on efficiency. This would result in an approximate 1,800-ton reduction of NOx emissions over those high ozone days. A reduction of 18 tons of NOx emissions on an ozone season day would represent a reduction of over 10 percent of NYMA NOx emissions from the electricity generation sector and an overall reduction of 3.5 percent from all sources.[7]

Electric grid reliability:

To adequately assess future reliability needs associated with this rule making is proposing that affected facilities submit compliance plans by March 2, 2020 so that the NYISO may include the compliance solutions selected by facilities in its 2020 Reliability Needs Assessment (RNA).

Proposal:

To address NOx emissions from SCCTs on high ozone days, DEC is proposing to develop a new regulation, Subpart 227-3, that will apply to SCCTs with a nameplate capacity of 15 megawatts or greater that bid into the NYISO wholesale market. This regulation will phase in lower emission limits for NOx during the ozone season and will limit the current averaging provision found in Subpart 227-2.[8] The sources subject to this proposal will continue to be subject to the requirements of Subpart 227-2 outside of the ozone season. This rulemaking proposes additional requirements for SCCTs during the ozone season allowing more flexibility outside of the ozone season. The requirements are expanded on in the following paragraphs.

Control Requirements:

The NOx emission limits for SCCTs will be phased in as shown in Tables 2 and 3 below. These limits may be met by averaging only SCCTs on a facility-wide basis.

By May 1, 2023

	NOx Emission Limit (ppmvd[9])
All SCCTs	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

By May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

Also beginning May 1, 2023, SCCTs will only be able to average emissions with other SCCTs at the facility or, if the facility opts to utilize one of the offered compliance options, then those SCCTs may average with approved electricity storage or renewable energy resources during the ozone season.

Compliance Options:

Owners and operators may elect to meet the limits as proposed. To offer flexibility, this rule is proposing two additional compliance options:

1) Owners and operators may elect an ozone season stop where it is recorded in the operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

COSTS

Older SCCTs are typically not conducive to the addition of retrofit control technology. DEC expects that most impacted facilities will choose to replace or shutdown the non-compliant older SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy's Energy Information Administration (EIA).

Table 4 presents costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost ($/kW)	Notes
EIA	$1,054 - $1,558[10]	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	$1,314 - $1,357[11]	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

Most SCCTs have a capacity factor of less than 5 percent, meaning that they are used less than 5 percent of the time. In addition, with the implementation of several New York State initiatives,[12] demand for these units should continue to decline so the entire SCCT fleet would likely not need to be replaced.

Owners and operators may opt to install after-market emission control devices such as water injection technology. While costs vary widely depending on location, operation and siting, it has been reported to DEC, anecdotally, that the cost of adding after-market water injection to these older sources is approximately $2,000,000. Other sources report costs of $10,000 - $15,000 per megawatt,[13] however, this data does not include installation and other associated costs.

Cost of Nonattainment:

This proposal is part of a suite of New York State efforts to bring the NYMA into attainment for ozone, in order to protect human health. EPA projected a wide array of benefits that would be realized on a national level, excluding California, if ozone attainment is achieved.[14] The human cost of nonattainment to New York State residents is presented in Table 5.

Attainment Provides Prevention of:	
Deaths from effects of ozone	13 - 22
Deaths from effects of PM2.5	31 - 70
Nonfatal heart attacks	4 - 36
Hospital admissions & emergency room visits	134
Acute bronchitis	48
Upper & lower respiratory symptoms	1,540
Exacerbated asthma	32,200
Missed work & school	26,320
Restricted activity days	86,800

Table 5: Summary of Total Number of Annual Ozone and PM-Related Premature Mortalities and Premature Morbidity: 2025 National Benefits (adapted from EPA, 2015 RIA, p. ES-16)

LOCAL GOVERNMENT MANDATES

The proposed regulation does not contain a mandate on local governments.

PAPERWORK

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify its Title V permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to the Department for approval.

DUPLICATION

The proposed Subpart 227-3 does not duplicate or conflict with any other state or federal requirements.

ALTERNATIVES

DEC considered two alternatives in assessing this proposal, leave the emission rates as they are and just lowering emission rate requirements. The first option would leave New York open to CAA Section 126 petitions and if acted upon by EPA could require controls within three years. The second option does not allow for the compliance flexibility and reliability considerations included in the proposal that were developed during the stakeholder process.

FEDERAL STANDARDS

The proposed rule does not exceed any minimum federal standards.

COMPLIANCE SCHEDULE

March 2, 2020: All impacted sources must submit a compliance plan that must contain minimum data to demonstrate compliance will be achieved.

[1] 73 FR 16436 (March 27, 2008), codified at 40 CFR section 50.15. Attainment of the 2008 ozone NAAQS is determined when the fourth highest daily maximum 8-hour average ambient air quality ozone concentration, averaged over three year, is less than or equal to 0.075 ppm.

[2] 80 FR 65292 (October 26, 2015).

[3] 83 FR 56781 (November 14, 2018).

[4] 83 FR 25776 (June 4, 2018).

[5] EPA Air Markets Program Data. https://ampd.epa.gov/ampd/.

[6] Percentages calculated from EPA Air Markets Program Data for days which exceeded the ozone NAAQS. https://ampd.epa.gov/ampd/.

[7] "New York State implementation plan for the 2008 ozone national ambient air quality standards." http://www.dec.ny.gov/chemical/110727.html.

[8] May 1 – October 31 of each year.

[9] Parts per million on a dry volume basis at fifteen percent oxygen.

[10] EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

[11] NYISO, Demand Curve Model – 2019-2020.xlsm. Retrieved (1/3/2019) from: https://www.nyiso.com/search?time=last-year& sortField=_score&resultsLayout=list&q=Demand%20Curve% 20Model%202016.

[12] Including energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard.

[13] The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

[14] Regulatory Impact Analysis (RIA) for the 2015 ozone NAAQS.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

EFFECT OF RULE

DEC does not expect the requirements of this proposal to adversely impact employment opportunities with small businesses. Businesses and local governments subject to this proposed rule generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level. The facilities subject to the proposed rule are large businesses and corporations.

The proposed regulation does not contain a mandate on local governments. Local governments have no additional compliance obligations. There are two SCCTs that are owned by local governments that are listed in the table below. While these sources will be subject to the requirements of this proposal, they already comply with the lower NOx rates and so no changes will be required by the facilities. While the two sources will be required to submit compliance plans, as outlined below, their plan requirements are simplified because they already comply with the emissions limits.

Facility	Local Government
Freeport	Village of Freeport
SA Carlson	Town of Jamestown

Table 1: Local Governments Subject to the Proposed Rule

COMPLIANCE REQUIREMENTS

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity.
- Ownership.
- A list of each emission source that includes identifying numbers such as facility number, source number and name.
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule.
- Which emission sources will install controls and what those controls will be.
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023	NOx Emission Limit (ppmvd[1])
All simple cycle and regenerative combustion turbines	100

Table 2: NOx emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025	
Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 3: NOx emission limits for SCCTs beginning 5/1/2025

PROFESSIONAL SERVICES

It is not expected that small businesses or local governments are likely to need professional services to comply with this rule. If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COMPLIANCE COSTS

Compliance costs discussed below are expected to impact larger power generation businesses, not small businesses or local governments. Discussion on the compliance costs to large generation businesses follows.

DEC is proposing to require each source owner to develop a compliance plan to demonstrate how they intend to comply with the proposed rule. The SCCTs installed prior to 1986 are typically not conducive to the addition of retrofit control technology. Furthermore, forty-eight of these sources are located on barges that may not offer the space necessary for controls. As a result, DEC expects that most impacted SCCT owners will choose to replace or shutdown the non-compliant SCCTs. To estimate replacement costs DEC looked to information provided by the NYISO and Department of Energy (DOE), Energy Information Administration (EIA).

The EIA describes overnight costs for electricity generating facilities as including[2]:

- Civil and structural costs: allowance for site preparation, drainage, installation of underground utilities, structural steel supply, and construction of buildings on the site;
- Mechanical equipment supply and installation: major equipment, including but not limited to, boilers, flue gas desulfurization scrubbers, cooling towers, steam turbine generators, condensers, photovoltaic modules, combustion turbines, and other auxiliary equipment;
- Electrical and instrumentation and control: electrical transformers, switchgear, motor control centers, switchyards, distributed control systems, and other electrical commodities;
- Project indirect costs: engineering, distributable labor and materials, craft labor overtime and incentives, scaffolding costs, construction management start up and commissioning, and contingency fees; and
- Owners costs: development costs, preliminary feasibility and engineering studies, environmental studies and permitting, legal fees, insurance costs, property taxes during construction, and the electrical interconnection costs, including a tie-in to a nearby electrical transmission system.[3]

Table 4 presents the full overnight costs developed by EIA and NYISO for full replacement of an SCCT.

Source	Overnight Cost ($/kW)	Notes
EIA	$1,054 - $1,558[4]	Range is specific for the Long Island and New York City area and includes conventional and advanced combustion turbines.
NYISO	$1,314 - $1,357[5]	Range is specific for the Long Island and New York City area and represents replacement with a dual fuel peaking turbine.

Table 4: Estimated range of overnight costs for full replacement of an SCCT

DEC believes that the entire capacity of generation will likely not need to be replaced. Most SCCTs have a capacity factor of less than 5 percent, meaning that they are used less than 5 percent of the time on an annual basis. In addition, with the implementation of several New York State initiatives, including the State's recently announced energy efficiency and energy storage targets, Reforming the Energy Vision and the Clean Energy Standard, demand for these units should continue to decline. There are over 3,400 MW of SCCT capacity listed in the NYISO Gold Book[6] that are older, pre-1986 SCCTs.

Owners and operators may opt to install after-market emission control devices on sources that are unable to comply. Water injection technology is the after-market technology that a facility owner would likely consider for these older sources. The costs of adding after-market emission control devices varies widely depending on location, operation and land space availability. It has been reported to DEC, anecdotally, that the cost of adding after-market water injection to one of these older sources is approximately two million dollars. Other sources discuss a cost of $10,000 - $15,000 per megawatt,[7] and many of the sources that would be impacted are 15 to 20 megawatts each. However, this data does not include installation and other associated costs.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

It is not expected that small businesses will need to comply with this proposed rule. As noted above, the two local governments subject to the emission limits already comply. This is not a mandate on small businesses or local government.

MINIMIZING ADVERSE IMPACTS

To minimize any adverse impacts DEC is proposing a phase-in of requirements as well as a reliability provision. The phase-in of requirements allows for power companies, with affected sources, to plan over a longer term. In addition, DEC is proposing several compliance options to offer compliance flexibility:

1) Owners and operators may elect an ozone season stop where it is recorded in their operating permit that the source may not operate during the ozone season.

2) Owners and operators may elect to adhere to an output-based NOx daily emission rate that includes electric storage and renewable energy under common control with the SCCTs with which they are averaging.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.[8]

CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in Subpart 227-3. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce immediate impacts on affected sources, Subpart 227-3 requires a compliance plan due on March 2, 2020 followed by reduced NOx emission limits phased-in first on May 1, 2023 and later on May 1, 2025. This will allow owners and operators of affected sources time to comply with the proposed Subpart 227-3.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

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[1] Parts per million on a dry volume basis at fifteen percent oxygen.

[2] Overnight costs include the costs for the physical power plant assuming it can be built overnight. As a result, interest on loans are not factored into the cost estimates.

[3] EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

[4] EIA, Capital Cost Estimates for Utility Scale Electricity Generating Plants, November 2016.

[5] NYISO, The New York Installed Capacity (ICAP) market Working Group. Available here: http://www.nyiso.com/public/markets_operations/market_data/icap/index.jsp.

[6] NYISO, 2017 Load and Capacity Data.

[7] The data provided only includes capital cost. "Gas Turbine Combustion." Lefebvre & Ballal. CRC Press, April 26, 2010.

[8] https://www.dec.ny.gov/chemical/113887.html.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines (SCCTs) during the ozone season.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

Only one facility located in a rural area is affected by this regulation – the Samuel A. Carlson Generating Station located in Jamestown, Chautauqua County.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Reporting & Recordkeeping:

This proposal will require each affected facility to submit a compliance plan to DEC. The compliance plan will state how each facility plans to comply with the new requirements.

Those facilities required to meet new emission limits will be required to submit permit applications to modify their Title V permits to incorporate the newly applicable requirements by the May 1, 2023 compliance date. These changes can be incorporated into the renewal application for the facility's Title V permit (Title V permits must be renewed at five-year

intervals). If there are no changes caused by the proposed Subpart 227-3 no permit action is required.

Subject facilities that do not use a continuous emissions monitoring system (CEMS) will be required to perform an emissions test to assure compliance with the applicable NOx emission limits. Every subject facility will be required to submit test protocols and test reports to DEC for approval.

An owner or operator that elects to use the Electric Storage and Renewable Energy Resources compliance option must submit annual electricity generation and NOx emissions data to DEC.

Compliance Requirements:

On or before March 2, 2020: All impacted sources must submit a compliance plan that must, at minimum, contain:

- Nameplate capacity.
- Ownership.
- A list of each emission source that includes identifying numbers such as facility number, source number and name.
- A schedule outlining how the owner or operator will comply with the requirements set forth in the rule.
- Which emission sources will install controls and what those controls will be.
- Which emission sources will be replaced or repowered.

Effective May 1, 2023: The first phase of NOx emission limits will be implemented during the ozone season and SCCTs will be limited to averaging with other SCCTs, storage or renewable energy resources. The first phase of emission limits will be:

By May 1, 2023

	NOx Emission Limit (ppmvd[1])
All SCCTs	100

Table 1: NOx emission limits for SCCTs beginning 5/1/2023

Effective May 1, 2025: The second and final phase of NOx emission limits will be implemented during the ozone season as follows:

Beginning May 1, 2025

Fuel Type	NOx Emission Limit (ppmvd)
Gaseous fuels	25
Distillate oil or other liquid fuel	42

Table 2: NOx emission limits for SCCTs beginning 5/1/2025

Professional Services:

If an affected source currently utilizes professional services, such as consulting engineers, to comply with 6 NYCRR Subpart 227-2, they may continue to use those services to comply with the requirements of this proposal.

COSTS

The Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule. Therefore, no changes will be required by the facility. A compliance plan is still required by March 2, 2020. The costs of preparing the compliance plan should be minimal.

MINIMIZING ADVERSE IMPACT

Since the Samuel A. Carlson Generating Station already complies with the NOx rates in the proposed rule, there are no adverse impacts to that facility.

RURAL AREA PARTICIPATION

DEC participated in several stakeholder meetings including those for impacted facilities and local environmental justice groups over a period of eighteen months. In addition, DEC posted a stakeholder outline on the DEC website to encourage stakeholder participation and comment.[2]

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

[1] Parts per million on a dry volume basis at fifteen percent oxygen.

[2] https://www.dec.ny.gov/chemical/113887.html.

Job Impact Statement

The New York State Department of Environmental Conservation (DEC) is proposing new 6 NYCRR Part 227-3, "Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." The primary goal of this proposal is to lower allowable NOx emission rates from simple cycle and regenerative combustion turbines during the ozone season.

NATURE OF IMPACT

DEC does not expect the requirements of this proposal to adversely impact employment opportunities at the affected sources. The affected sources generate electricity that is injected into the electrical grid and those facilities are required to maintain generation compliant with reliability rules at the federal and state level.

CATEGORIES AND NUMBERS AFFECTED

This proposal will affect facilities that use older simple cycle and regenerative combustion turbines (SCCTs) to generate electricity for the electrical grid. Newer SCCTs are expected to already meet the requirements set forth in this proposal. At least 18 facilities utilizing older SCCTs will be affected by this proposal.

REGIONS OF ADVERSE IMPACT

This is a statewide proposal, so all SCCTs will be subject to the requirements of a final rule. However, most SCCTs are located in New York City and on Long Island.

MINIMIZING ADVERSE IMPACT

The proposed rule contains several compliance options that owners and operators may utilize in order to comply with the proposed requirements. The first is to meet the limits as proposed. Owners and operators may also opt to shut down or not run non-compliant SCCTs during the ozone season. If an owner or operator elects to not run an SCCT during the ozone season, it must be recorded in the operating permit. Another compliance option offered in this proposal allows an owner or operator of an existing source to comply with applicable limits by meeting an average output-based emission limit (that includes renewables and storage) as a daily average emission rate. Under this option, the storage or renewable energy resource must be under common control with the SCCTs to be included in the averaging calculation.

These compliance options will allow existing SCCTs that cannot meet the proposed emission limits to operate for a few additional years while new SCCTs or other electricity generating resources are constructed. As a result, the Department does not anticipate adverse impacts to employment opportunities at a company subject to the rule.

SELF EMPLOYMENT OPPORTUNITIES

It is not expected that the proposed Subpart 227-3 will have a measurable impact on opportunities for self-employment.

INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

BEACH Act Standards and Reclassification Rule

I.D. No. ENV-12-18-00043-RP

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following revised rule:

Proposed Action: Amendment of Parts 700, 703 and 890 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 17-0301

Subject: BEACH Act Standards and Reclassification Rule.

Purpose: To comply with the Federal BEACH Act of 2000 (P.L. 106-284) and protect coastal recreation waters for recreation.

Text of revised rule:

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 700, entitled "Definitions, Samples and Tests," is amended as follows.

Subdivision (a) of Section 700.1 is amended by adding the following definitions:

(73) Coastal recreation waters mean the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under section 303(c) of the federal Clean Water Act by the State for use for swimming, bathing, surfing, or similar water contact activities. Coastal recreation waters do not include inland waters or waters upstream of the mouth of a river or stream having an unimpeded natural connection with the Great Lakes or open marine waters.

(74) Primary contact recreation season means the time period of the year beginning May 1 and ending October 31 or as determined by the Department on a case-specific basis in order to protect the best usages of the waters.

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 703, entitled "Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations," is amended as follows:

Section 703.4 is amended as follows:

§ 703.4 Water quality standards for coliforms, *enterococci, and E. coli.*

Total and fecal coliform, *enterococci, and E. coli* standards for specific classes are provided in this section.

(a) Total coliforms (number per 100 [ml] *mL (colony-forming units or most probable number)*).

Classes	Standard
AA	The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 50 and 240, respectively.
A, B, C, D, SB, SC, I, SD	The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 2,400 and 5,000, respectively.
SA	The median most probable number (MPN) value in any series of representative samples shall not be in excess of 70.
A-Special	The geometric mean, of not less than five samples, taken over not more than a 30-day period shall not exceed 1,000.
GA	The maximum allowable limit is 50.

(b) Fecal coliforms (number per 100 [ml] *mL (colony-forming units or most probable number)).*

Classes	Standard
A, B, C, D, SB, SC, I, SD	The monthly geometric mean, from a minimum of five examinations, shall not exceed 200.
A-Special	The geometric mean, of not less than five samples, taken over not more than a 30-day period shall not exceed 200.

Subdivision 703.4(c) is repealed and a new subdivision 703.4(c) is adopted to read as follows:

(c) Enterococci (number per 100 mL (colony-forming units or most probable number)).

Classes	*Standard*
Coastal recreation waters of the following classes: SA and SB	*The geometric mean of samples collected over any consecutive 30-day period shall not exceed 35, and no more than 10 percent of the samples collected in the same 30-day period shall exceed 130.*

A new subdivision 703.4(d) is adopted to read as follows:

(d) E. coli (number per 100 mL (colony-forming units or most probable number)).

Classes	*Standard*
Coastal recreation waters of the following classes: A, A-Special, AA, AA-Special, and B	*The geometric mean of samples collected over any consecutive 30-day period shall not exceed 126, and no more than 10 percent of the samples collected in the same 30-day period shall exceed 410.*

A new subdivision 703.4(e) is adopted to read as follows:

(e) Limitations on applicability of water quality standards for coliforms, enterococci, and E. coli.

(1) The total and fecal coliform standards for Class B, C, D, SB, SC, I, and SD waters shall be met: (i) during the primary contact recreation season unless the permitee can demonstrate to the satisfaction of the Department that disinfection is not necessary to protect human health; (ii) in any other instance where the Department determines it necessary to protect human health or the best usages of the waters; and (iii) where required by state or federal law or interstate compact.

(2) The enterococci standards for Class SA and SB coastal recreation waters shall be met: (i) during the primary contact recreation season unless the permitee can demonstrate to the satisfaction of the Department that disinfection is not necessary to protect human health; (ii) in any other instance where the Department determines it necessary to protect human health or the best usages of the waters; and (iii) where required by state or federal law or interstate compact.

(3) The E. coli standards for Class A, A-Special, AA, AA-Special and B coastal recreation waters shall be met: (i) during the primary contact recreation season unless the permitee can demonstrate to the satisfaction of the Department that disinfection is not necessary to protect human health; (ii) in any other instance where the Department determines it necessary to protect human health or the best usages of the waters; and (iii) where required by state or federal law or interstate compact.

Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 890, entitled "New York City Waters" is amended to read as follows.

Table I of section 890.6 is amended as follows:

890.6 Table I.

TABLE I

CLASSIFICATIONS AND STANDARDS OF QUALITY AND PURITY ASSIGNED TO FRESH SURFACE WATERS AND TIDAL SALT WATERS, INCLUDING CERTAIN TIDAL WATERS OF THE INTERSTATE SANITATION DISTRICT WITHIN DESIGNATED DRAINAGE BASINS OF NEW YORK BAY, RARITAN BAY AND A PORTION OF THE ATLANTIC OCEAN, INCLUDING THE SUBBASINS OF ARTHUR KILL, KILL VAN KULL, THE HARLEM RIVER AND THE LOWER EAST RIVER, BRONX, KINGS, NEW YORK, QUEENS, RICHMOND AND WESTCHESTER COUNTIES, NEW YORK

Item No.	Waters Index Number	Name	Description	Map Ref. No.	Class	Standards
4		Lower New York Bay portion including Gravesend Bay	That portion of Bay south of The Narrows and bounded on north by line from tip of Fort Wadsworth to tip of Fort Hamilton; and bounded on south by line from south limits of Fort Wadsworth Military Reservation to Norton Point at western tip of Coney Island peninsula near Sea Gate, including Gravesend Bay.	S-23se S-24sw	[I]*SB*	[I]*SB*

Item No.	Waters Index Number	Name	Description	Map Ref. No.	Class	Standards
6		Upper New York Bay including The Narrows, Atlantic Basin, Gowanus Bay	That portion of Bay within New York bounded on south by line from tip of Fort Wadsworth to tip of Fort Hamilton; and bounded on west by shore of Staten Island north of tip of Fort Wadsworth, thence by north-south line across mouth of Kill Van Kull from northernmost point of Staten Island to easternmost point at Constable Point, Bayonne, New Jersey, thence by New York-New Jersey boundary line from mouth of Hudson River; and bounded on north by true east-west line passing through southernmost tip of Manhattan Island at the Battery and intersecting state boundary line, thence by line extending from same point at the Battery across mouth of Lower East River to western tip of pier 17 at Brooklyn; thence bounded on east by western shore of Brooklyn from pier 17 south to Fort Hamilton, excluding Erie Basin.	S-23ne S-23se S-24nw	[I]*SB*	[I]*SB*

Map 3 of section 890.9 is repealed and the section is marked "*Reserved*"

Map 4 of section 890.10 is repealed and the section is marked "*Reserved*"

Revised rule compared with proposed rule: Substantial revisions were made in Part 703.

Text of revised proposed rule and any required statements and analyses may be obtained from Michelle Tompkins, Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, New York 12233, (518) 402-8179, email: BeachRule@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: April 15, 2019.

Additional matter required by statute: Pursuant to Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act, Short Environmental Assessment Forms, a Negative Declaration, and a Coastal Assessment Form have been prepared and are on file with the Department.

Summary of Revised Regulatory Impact Statement (Full text is posted at the following State website:https://dec.ny.gov/regulations/112962.html):

The New York State Department of Environmental Conservation (Department or DEC) is proposing revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department is also proposing upgrades to the classification of two water bodies.

1. Statutory Authority

The statutory authority for adoption of water quality standards and classifications is found in the Environmental Conservation Law (ECL) Articles 3 and 17, specifically, Section 17-0301 which provides that the Department "shall group the designated waters of the state into classes. Such classification shall be made in accordance with considerations of best usage in the interest of the public" and further that the Department "shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification."

2. Legislative Objectives

The legislative objectives related to this proposed rule are to "conserve, improve and protect [the State's] natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being." ECL 1-0101(1). Furthermore, it is the policy of the State to guarantee that the "widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences." ECL 1-0101 (3) (b). In furtherance of these broad policies, specific objectives are to "maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof..." ECL 17-0101.

3. Needs and Benefits

The proposed rule would adopt new pathogen standards for all coastal recreation waters and new definitions for the terms "coastal recreation waters" and "primary contact recreation season," which are needed to meet the requirements of the federal BEACH Act. The proposed standards are consistent with the United States Environmental Protection Agency's (USEPA's) 2012 Recreational Water Quality Criteria (RWQC). The RWQC are USEPA's recommendations for protecting human health in waters designated for primary contact recreation use. The proposed standards, as revised, are: a 30-day Geometric Mean (GM) of 35 cfu/100mL and a statistical threshold value (STV) of 130 cfu/100mL for enterococci, and a 30-day GM of 126 cfu/100mL and a STV of 410 cfu/100mL for E. coli. Existing total and fecal coliform standards for recreational use protection are not proposed for repeal.

In evaluating the waters that would be defined as "coastal recreation waters," and covered by this proposed rule, the Department identified two large coastal waters, currently designated as Class I, that were not designated as having a best usage of primary contact recreation: Upper New York Bay (6 NYCRR § 890.6 - Item No. 6); and a portion of Lower New York Bay (6 NYCRR § 890.6 - Item No. 4). Considering the water quality improvements in these two waterbodies and that they are adjacent to numerous public beaches, the Department has determined that they should be reclassified from Class I to Class SB to designate the best usage of primary contact recreation.

In 2015, the Department revised its regulations to require that Class I and SD waters be of quality suitable for swimming. However, that 2015 Class I and SD rule making did not revise the best usages of those waters. The best usages of those waters remained "secondary contact recreation and fishing," and "fishing," respectively. Therefore, reclassification of 6 NYCRR § 890.6 - Item Nos. 4 and 6 is necessary to make them coastal recreation waters. The 2015 Assessment of Public Comment was in error on that point.

4. Costs

The financial impact due to the adoption of the proposed E. coli standard is considered to be de minimus, as existing disinfection treatment facilities discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments. However, there may be an increased cost for laboratory analysis, depending on how the Department implements the proposed E. coli standards for dischargers to the Great Lakes. Additional costs for laboratory analysis of up to $73,350 may occur should DEC require facilities to sample and report both E. coli and fecal coliform. At this time, DEC has not determined whether the E. coli standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

Under the proposed enterococci standards, 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) would likely need to upgrade their existing disinfection systems or incur

increased operation and maintenance (O&M) costs resulting from higher dosing. The estimated total financial impact for capital and O&M costs is as follows: 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately $55 million to construct chlorination/dechlorination; 29 impacted facilities would incur increased O&M costs, collectively totaling approximately $14 million per year.

There may also be an increased cost for laboratory analysis, depending on how the Department implements the proposed enterococci standards for dischargers to the marine coastal recreation waters. Additional costs for laboratory analysis of up to $208,620 may occur should DEC require facilities to sample and report both enterococci and coliform. However, if DEC supplants coliform in permits with enterococci, there would be no additional cost because the analytical costs for these two indicators are the same. At this time, DEC has not determined whether the enterococci standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

Certain coastal Class SB waters (including waters proposed for reclassification from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q) and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/ strategies, including up to 100% CSO capture. Given that NYC must currently comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide & East River/ Open Water LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The proposed reclassification would also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. An examination of the current DO levels in these water bodies reveals that the new standard would be attained and would not likely result in additional costs.

5. Local Government Mandates

As described in this document, this proposed rule would revise and update New York State's water quality standards which in turn would be incorporated into permits issued under Titles 7 and 8 of Article 17 of the Environmental Conservation Law. Any county, city, town, village, school district, fire district, or other special district permitted to discharge under the above statute may be responsible for complying with revised effluent limitations resulting from the proposed rule. The Department has reviewed potentially affected permits and included the estimated costs to comply with the proposed rule discussed above. Beyond these costs, this rule would not impose any additional program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances included in their permit. The proposed regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This proposed rule does not require the submission of any new forms.

7. Duplication

Both federal law and federal regulations set forth requirements for states regarding water quality standards (uses and criteria). Under federal law, promulgation of surface water standards is primarily a state responsibility. EPA provides oversight and guidance and approves state standards for surface water but does not promulgate standards that apply nationwide. However, where a state's standards are inadequate, and EPA disapproves, EPA must then promulgate standards for the state if the state does not timely address the inadequacies.

8. Alternatives

The Department considered the "no action" alternative which could place the State in the position of not meeting the federal BEACH Act. The no action alternative was rejected as it was determined to be less protective of coastal recreation waters than the proposed rule and would not implement the requirements of the BEACH Act. The "no action" alternative for the reclassification was also rejected because the reclassification is appropriate at this time because of improvements in water quality since 1985 and because the two large coastal waters are adjacent to numerous public beaches.

9. Federal Standards

The proposed regulatory changes do not exceed any federal minimum standards.

10. Compliance Schedule

The proposed rule, if adopted, would take effect on the date established in the Notice of Adoption as published in the State Register. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule in the permit may be established on a case-by-case basis with the permittee and may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

Revised Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department or DEC) is proposing revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department is also proposing upgrades to the classification of two water bodies.

1. Effect of Rule

The Department reviewed the proposed rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16) of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed E. coli standard is considered to be de minimus, as existing disinfection treatment facilities discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments. However, there may be an increased cost for laboratory analysis, depending on how the Department implements the proposed E. coli standards for dischargers to the Great Lakes. The Department is not proposing to repeal the existing total and fecal coliform standards. The method for implementation of the standards into SPDES permits as limitations would be determined following adoption of the criteria. At this time, the Department has not determined whether the E. coli standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require facilities to sample and report both E. coli and fecal coliform. At this time, DEC has not determined whether the E. coli standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

The Department has revised the proposed express terms so that the proposed standards for E. coli in Class A, A-Special, AA, and AA-Special waters would not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

Under the proposed enterococci standards, 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) would likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is $512,676/MGD design flow in capital costs with an estimated O&M cost of $10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV

disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of $10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost $220,000/MGD. The average O&M cost of approximately $18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and $27,900/MGD per year for facilities that currently chlorinate but would need to add de-chlorination facilities. The estimated total financial impact for capital and O&M costs is as follows: 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately $55 million to construct chlorination/dechlorination; 29 impacted facilities would incur increased O&M costs, collectively totaling approximately $14 million per year.

There may also be an increased cost for laboratory analysis, depending on how the Department implements the proposed enterococci standards for dischargers to the marine coastal recreation waters. The Department is not proposing to repeal the existing total and fecal coliform standards. The method for implementation of the standards into SPDES permits as limitations would be determined following adoption of the criteria. At this time, the Department has not determined whether the enterococci standards would be included in SPDES permits in lieu of, or in addition to, coliform standards. At this time, DEC has not determined whether the enterococci standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication. Additional costs for laboratory analysis of up to $208,620 may occur should the Department require facilities to sample and report both enterococci and coliform. The Department has revised the proposed express terms so that the proposed standards for enterococci in Class SA waters would not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

Certain coastal Class SB waters (including waters proposed for reclassification from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q), and adhere to the terms of the 2005 Consent Order between the Department and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must currently comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The proposed reclassification would also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard would be attained and not likely result in additional costs.

2. Compliance Requirements

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances include in their permit. The proposed regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This proposed rule does not require the submission of any new forms. As mentioned above, the Department has identified costs associated with the proposed rule that may be incurred by small businesses or local governemnts.

3. Professional Services

There may be professional engineering services needed for the facilities potentially affected by the proposed rule, as mentioned above, to upgrade existing disinfection systems.

4. Compliance Costs

The Department reviewed the proposed rule and identified the likely anticipated costs that are set forth in this section. The estimated total financial impact for capital and O&M costs is for the municipal wastewater treatment facilities and PCI facilities to meet the proposed standards is a capital cost of approximately $55 million and a net increase in O&M costs of approximately $14 million per year. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require facilities to sample and report both E. coli and fecal coliform. Additional costs for laboratory analysis of up to $208,620 may occur should the Department require facilities to sample and report both enterococci and coliform. For a more detailed discussion please see above.

5. Economic and Technological Feasibility

The Department has concluded that compliance by regulated parties is both economically and technologically feasible. Under the proposed enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased O&M costs resulting from higher dosing.

6. Minimizing Adverse Impact

In developing this rulemaking, consideration was given to approaches that would minimize adverse economic impacts of the rule on small businesses and local governments such as differing requirements, outcome standards, and potential exemptions from coverage. Given the nature of this rule, and in order to adequately protect the waters of the State and to meet the requirements of federal law, differing requirements or potential exemptions for small businesses and local governments were not feasible. However, for the potentially impacted facilities subject to this rule, the Department will allow necessary time to establish a path to compliance.

The proposed regulatory changes, if adopted, would take effect on the date that the Notice of Adoption is published in the State Register. The Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule in the permit may be worked out on a case-by-case basis with the permittee. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

7. Small Business and Local Government Participation

The Department has informed the public about the proposed rule through the Department website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. The Department has held two public information meetings and two public hearings pertaining to the rule making. The public has had the opportunity to comment on the proposed rule by attending a public hearing or by submitting written comments to the Department. The public will have an opportunity to comment on the revisions to the proposed rule by submitting written comment to the Department.

Revised Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department or DEC) is proposing revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department is also proposing upgrades to the classification of two water bodies.

1. Types and Estimated Numbers of Rural Areas

The proposed rule would adopt new water quality standards for coastal recreation waters and reclassify certain Class I waters consisting of Upper New York Bay and a portion of Lower New York Bay to add the best usage of primary contact recreation to these waters. Coastal recreation waters are found along the shores of Bronx, Cayuga, Chautauqua, Erie, Jefferson, Kings, Monroe, Nassau, Niagara, Orleans, Oswego, Queens, Richmond, St. Lawrence, Suffolk, Wayne, and Westchester counties. The Class I waters proposed for reclassification to Class SB border Kings, New York, and Richmond counties. Cayuga, Chautauqua, Jefferson, Orleans, Oswego, St. Lawrence, and Wayne counties are rural areas as defined in Executive Law.

2. Reporting, Recordkeeping, Other Compliance Requirements, and Professional Services

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances include in their permit. The proposed regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for

which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This proposed rule does not require the submission of any new forms, nor require substantial additional professional services, in rural areas of the State.

3. Costs

As mentioned in the Revised Regulatory Impact Statement (RIS) this rule may have a financial impact related to an increased cost for laboratory analysis, depending on how the Department implements the proposed E. coli standards for dischargers to the Great Lakes. The method for implementation of the standards into SPDES permits as limitations would be determined following adoption of the criteria. At this time, the Department has not determined whether the E. coli standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require facilities to sample and report both E. coli and fecal coliform. At this time, DEC has not determined whether the E. coli standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

4. Minimizing Adverse Impact

The Department has revised the proposed express terms so that the proposed standards for E. coli in Class A, A-Special, AA, and AA-Special waters would not necessarily apply year-round. This revision may reduce the need for samples outside of the primary contact recreation season and thus reduce costs for laboratory analysis.

5. Rural Area Participation

The Department has informed the public about the proposed rule through the Department website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. The Department has held two public information meetings and two public hearings pertaining to the rule making. The public has had the opportunity to comment on the proposed rule by attending a public hearing or by submitting written comments to the Department. The public will have an opportunity to comment on the revisions to the proposed rule by submitting written comment to the Department.

Revised Job Impact Statement

This document is prepared in accordance with the State Administrative Procedure Law (SAPA) § 201-a. Pursuant to SAPA § 201-a(2)(a), the Department has determined that a Job Impact Statement is not required because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. This document contains the Department's rationale for this determination.

1. Nature of Impact

The Department is proposing new standards for all coastal recreation waters to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). In addition, the Department is proposing to reclassify certain Class I waters consisting of Upper New York Bay and a portion of Lower New York Bay to add the best usage of primary contact recreation to these waters. The only businesses or entities that could potentially be adversely impacted by this rule are those that hold State Pollutant Discharge Elimination System (SPDES) permits for discharge to the affected waterbodies.

2. Categories and Numbers Affected

The Department reviewed the proposed rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16) of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed E. coli standard is considered to be de minimus, as existing disinfection treatment facilities discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require facilities to sample and report both E. coli and fecal coliform. At this time, DEC has not determined whether the E. coli standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

Under the proposed enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification from Class I to Class SB by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is $512,676/MGD design flow in capital costs with an estimated O&M cost of $10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of $10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost $220,000/MGD. The average O&M cost of approximately $18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and $27,900/MGD per year for facilities that currently chlorinate but will need to add de-chlorination facilities. Additional costs for laboratory analysis of up to $208,620 may occur should the Department require facilities to sample and report both enterococci and coliform. At this time, DEC has not determined whether the enterococci standards would be included in SPDES permits in lieu of, or in addition to, existing coliform standards; however, it is DEC's goal to avoid unnecessary duplication.

The estimated total financial impact for capital and O&M costs are as follows: 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately $55 million to construct chlorination/dechlorination; 29 impacted facilities would incur increased O&M costs, collectively totaling approximately $14 million per year. Additional costs for laboratory analysis of up to $73,350 may occur should the Department require facilities to sample and report both E. coli and fecal coliform. Additional costs for laboratory analysis of up to $208,620 may occur should the Department require facilities to sample and report both enterococci and coliform.

Although these costs are not de minimis, they are spread across a large number of facilities over time and are not likely to impact in any measurable way job opportunities in New York State. To the contrary, this rule may create job opportunities for engineers and construction firms to design and construct necessary waste water treatment plant retrofits.

Certain coastal Class SB waters (including waters proposed for reclassification from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402 (q) and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must currently comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's SPDES Permits, the CSO Control Policy and CWA section 402 (q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The proposed reclassification would also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard would be attained and not likely result in additional costs.

3. Regions of Adverse Impact

This rule would set forth new water quality standards for coastal recreation waters. These waters are found along the shores of Bronx, Cayuga, Chautauqua, Erie, Jefferson, Kings, Monroe, Nassau, Niagara, Orleans, Oswego, Queens, Richmond, St. Lawrence, Suffolk, Wayne, and Westchester counties. This rule would also upgrade the classification of Class I coastal waters of Upper New York Bay and a portion of Lower New York Bay, found along the shores of Kings, New York, and Richmond counties. However, as mentioned above, the proposed rule is not likely to negatively impact in any measurable way job opportunities in the State of New York. To the contrary, this rule may create job opportunities for engineers and construction firms to design and construct necessary wastewater treatment plant retrofits and may result in fewer beach closures which in turn would potentially increase tourism revenue for the affected areas.

4. Minimizing Adverse Impact

The proposed regulatory changes, if adopted, would take effect on the date that the Notice of Adoption is published in the State Register, or on an

effective date specified in the Notice of Adoption. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule in the permit may be worked out on a case-by-case basis with the permittee. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

5. Conclusion

The Department has determined that this potential impact is not a "substantial adverse impact on jobs and employment opportunities" as that term is defined in section 201-a(6)(c) of the New York State Administrative Procedure Act. In addition, this rule will not have a measurable impact on self-employment. Therefore, the Department has determined that a Job Impact Statement is not required.

Assessment of Public Comment

Comments were received both in writing and in oral testimony at one of the public hearings for this rule. Some comments were supportive of the Department's proposal and others were critical of the proposal or urged the DEC to change the proposed rule in several areas. Key areas of comment included but were not limited to the geographic scope of the waters covered by the proposed rule, the stringency of the proposed standards, and the averaging period for which the proposed standards would apply. In response to public comment, DEC is proposing several minor revisions to the rule, as well as replacing the originally proposed averaging period of 90 days for the standards to an averaging period of 30 days. Detailed responses to public comment are provided in the full Assessment of Public Comment document, available on the DEC website, at https://dec.ny.gov/regulations/112962.html.

Department of Financial Services

EMERGENCY RULE MAKING

Charges for Professional Health Services

I.D. No. DFS-08-19-00003-E
Filing No. 116
Filing Date: 2019-02-06
Effective Date: 2019-02-06

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 2601, 5221, and art. 51

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and in accordance with Insurance Law section 5108(b), the Superintendent of Financial Services ("Superintendent") adopted medical fee schedules promulgated by the Chairman of the Workers' Compensation Board (the "Chair"). In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

The Chair's medical fee schedules initially adopted in 1977 underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83, which prescribed that any changes the Chair made to the workers' compensation fee schedules automatically would apply to no-fault, and as such, no longer necessitated adoption of the workers' compensation fee schedules as changes were made to them.

In December 2018, the Chair adopted expansive amendments to its fee schedules for medical, chiropractic, behavioral health (otherwise known as the psychological fee schedule), and pediatric services (collectively the "medical fee schedules") to take effect on April 1, 2019. The Chair contended in its Regulatory Impact Statement, published in the December 26, 2018 issue of the New York State Register, that such changes were necessary to ensure that treating providers are paid a reasonable fee for their services so that injured workers may receive high quality medical care in the workers' compensation system.

Although the expansive changes to the fee schedules may be necessary to maintain quality health services for the workers' compensation system, the automatic adoption of such sweeping changes for use in the no-fault system within a relatively short period (April 1, 2019) would have a significant adverse impact on insurers' ability to absorb the health-service-related costs resulting from those changes within that timeframe. Those changes will result in a substantial overall increase (at least 10% increase has been reported) in total loss payments for nofault-related health services, which insurers could not have anticipated. Because health service payments account for more than 90% of the total loss costs in no-fault, insurers will need time to carefully study the impact of the changes in the workers' compensation medical fee schedules on no-fault in order to appropriately adjust no-fault premium rates to absorb the noticeable increase in no-fault claims costs. Furthermore, pursuant to Insurance Law Sections 3425 and 3426, there is a one-year "required policy period" for automobile policies, which may not be canceled during that period unless as prescribed in the statutes; therefore, policies that are already in effect could not be altered to reflect the sudden increase in loss costs. The Superintendent, therefore, deems it necessary to delay for 18 months the adoption of the medical fee schedules that the Chair has prepared and established, to take effect on April 1, 2019, and so those fee schedules will take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law 5108.

For the reasons stated above, emergency action is necessary for the preservation of the general welfare.

Subject: Charges for Professional Health Services.

Purpose: To delay the effective date of the Workers' Compensation fee schedule increases for no-fault reimbursement.

Text of emergency rule: Section 68.1 is amended to read as follows:

§ 68.1 Adoption of certain workers' compensation schedules

(a)*(1)* The existing fee schedules prepared and established by the [chairman] *chair* of the Workers' Compensation Board for industrial accidents are hereby adopted by the Superintendent of Financial Services with appropriate modification so as to adapt such schedules for use pursuant to the provisions of [section 5108 of the] Insurance Law *section 5108*.

(2)(i) Notwithstanding paragraph (1) of this subdivision, and except as provided in subparagraph (ii) of this paragraph, the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on October 1, 2020, and shall only apply to all charges for health services performed on or after October 1, 2020.

(ii) The following ground rules in the amendments to the fee schedules set forth in Parts 329, 333, 343, and 348 of 12 NYCRR that were promulgated by the chair of the Workers' Compensation Board on December 11, 2018, shall take effect for purposes of Insurance Law section 5108 on April 1, 2019, and shall apply to all charges for health services performed on or after April 1, 2019:

(a) General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule set forth in 12 NYCRR 348;

(b) General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule set forth in 12 NYCRR 329;

(c) General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule (formerly the Psychology Fee Schedule) set forth in 12 NYCRR 333, and;

(d) General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule set forth in 12 NYCRR 343.

(b)(1) The charges for services specified in [paragraph one of subsection (a) of section 5102 of the] Insurance Law *section 5102(a)(1)* and any further health service charges [which] *that* are incurred as a result of the injury and [which] *that* are in excess of basic economic loss, shall not exceed the charges permissible under the schedules prepared and established by the chair of the Workers' Compensation Board for industrial accidents *that are in effect for purposes of no-fault at the time the charges are incurred*. However, references to workers' compensation reporting and procedural requirements in such schedules do not apply *to no-fault*, e.g., requirements that provide for authorization to perform surgical procedures[, is not applicable to no-fault]. The general instructions and ground rules in the workers' compensation fee schedules apply, but those

rules [which] *that* refer to workers' compensation claim forms, preauthorization approval, *time limitations within which health services must be performed, enhanced reimbursement for providers of certain designated services,* and dispute resolution guidelines do not apply, unless specified in this Part.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-08-19-00003-P, Issue of February 20, 2019. The emergency rule will expire May 6, 2019.

Text of rule and any required statements and analyses may be obtained from: Camielle Barclay, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: Camielle.Barclay@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302, and Insurance Law Sections 301, 2601, 5221, and Article 51.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents. Section 5108(b) specifically authorizes the Superintendent to adopt the fee schedules prepared and established by the Chairman of the Workers' Compensation Board (the "Chair") or to promulgate fee schedules for health care benefits payable under the no-fault system for any services for which the Chair has not prepared and established; and subsection (c) prohibits a provider of health services, as defined in Article 51, in addition to the amount authorized pursuant to Insurance Law Section 5108.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits to contain the costs of no-fault insurance. To that end, and pursuant to Insurance Law Section 5108(b), the Superintendent adopted those fee schedules promulgated by the Chair. In addition, the Superintendent, after consulting with the Chair and the Commissioner of Health, established fee schedules for those services for which the Chair has not prepared and established fee schedules.

Since 1977, the workers' compensation fee schedules underwent annual revisions until the mid-1990s to reflect inflationary increases and to incorporate other necessary enhancements. In turn, the Superintendent adopted those fee schedules through amendments to Insurance Regulation 83. However, in 2002, the Superintendent promulgated an amendment to Insurance Regulation 83, which prescribed that any changes the Chair made to the workers' compensation fee schedules automatically would apply to no-fault, and therefore, no longer necessitated adoption of the workers' compensation fee schedules as changes were made to them.

3. Needs and benefits: In December 2018, The Chair adopted expansive amendments to its fee schedules for medical, chiropractic, behavioral health (otherwise known as the psychological fee schedule), and podiatric services (collectively the "medical fee schedules") to take effect on April 1, 2019. The Chair contended, in its Regulatory Impact Statement in the December 26, 2018 issue of the New York State Register, that such changes were necessary to ensure that treating providers are paid a reasonable fee for their services so that injured workers may receive high quality medical care in the workers' compensation system.

Although the expansive changes to the fee schedules may be necessary to maintain quality health services for the workers' compensation system, the automatic adoption of such sweeping changes for use in the no-fault system within a relatively short period (April 1, 2019) would have a significant adverse impact on insurers' ability to absorb the health-service-related costs resulting from those changes within that timeframe. Those changes will result in a substantial overall increase (at least a 10% increase has been reported) in total loss payments for no-fault-related health services, which insurers could not have anticipated. Because health service payments account for more than 90% of the total loss costs in no-fault, insurers will need time to carefully study the impact of the changes in the medical fee schedules on no-fault to appropriately adjust no-fault premium rates to absorb the noticeable increase in no-fault claims costs.

Furthermore, pursuant to Insurance Law Sections 3425 and 3426, there is a one-year "required policy period" for automobile policies, which may not be canceled during that period unless as prescribed in the statutes; therefore, policies that are already in effect could not be altered to reflect the sudden increase in loss costs. The Superintendent therefore, deems it necessary to delay for 18 months the adoption of the medical fee schedules that the Chair has prepared and established to take effect on April 1, 2019, and so those fee schedules will take effect on October 1, 2020 for use in no-fault pursuant to Insurance Law 5108.

However, this amendment to Insurance Regulation 83 will exclude certain workers' compensation ground rules from the 18-month delay, to wit: General Ground Rule 10 in the Workers' Compensation Chiropractic Fee Schedule, General Ground Rule 13 in the Workers' Compensation Behavioral Health Fee Schedule, and General Ground Rule 16 in the Workers' Compensation Podiatry Fee Schedule, which prohibit providers to whom these fee schedules apply from billing under current procedural terminology ("CPT") codes not listed in their respective fee schedules; and General Ground Rule 19 in the Workers' Compensation Medical Fee Schedule, which prohibits any chiropractor, podiatrist or provider of behavioral health services from billing under CPT codes in the medical fee schedule. Per the Chair, these rules are not new but clarification of existing rules; therefore, the Superintendent determined it was not necessary to delay their implementation.

Insurance Regulation 83 also is being amended to provide that any references in any workers' compensation ground rules regarding time limitations within which health services must be performed, as well as any enhanced reimbursement for providers of certain designated services, are inapplicable to no-fault. Insurance Law Section 5102(a) specifically prescribes any time limitations on receiving necessary health-related services. With respect to enhanced reimbursement for providers (20% in addition the fee schedule rate), the Chair, in General Ground Rule 17 of the Workers' Compensation Medical Fee Schedule, stated that this enhancement was necessary to increase the number of Board-authorized providers in the general medicine specialties. There is no requirement that providers be authorized by the Department to treat no-fault patients, nor is there a shortage of no-fault treating providers in general medicine specialties. Therefore, the Superintendent determined an additional 20% reimbursement increase solely for general medicine specialty providers of no-fault-related health services is unwarranted, and will not be adopted for use pursuant to Insurance Law Section 5108.

4. Costs: This amendment should have no compliance cost impact on applicants for no-fault benefits, insurers, self-insurers, or state and local governments. With respect to any cost impact to health service providers not regulated by the Department, participation in the no-fault system is optional, and the Department has imposed no preauthorization or reporting requirements on these applicants for no-fault benefits. Notwithstanding, this rule only delays the adoption of changes that the Chair has made to the workers' compensation fee schedules, which the Department is required to adopt pursuant to Insurance Law Section 5108.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork on any persons affected by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent carefully evaluated alternatives to the 18-month delay in adopting the workers' compensation medical fee schedules. The Superintendent determined that delaying only increases and not decreases in the fee schedules would cause significant systems issues for both insurers and health service providers, from having to utilize separate fee schedules and apply different ground rules. The Superintendent also considered a shorter implementation delay period, but determined, based on the Superintendent's expertise as insurance regulator, that an 18-month delay was most appropriate to permit insurers sufficient time to study the cost impact of the fee schedule changes to determine when and how to adjust their rates.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: This amendment shall take effect upon filing with the Department of State. However, the 18-month delay in adopting the Chair's amended medical fee schedules shall commence on April 1, 2019, the effective date of those fee schedules.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" as defined in State Administrative Procedure Act Section 102(8), because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Depart-

ment of Financial Services (the "Department") does not have any information to indicate that any self-insurers are small businesses.

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no requirements under the State's financial security laws requiring local governments to report to the Department or the Department of Motor Vehicles that they are self-insured. Therefore, the Department has no way of estimating how many local government units are self-insured for no-fault benefits.

The types of small businesses affected by this rule are applicants for no-fault benefits, who are typically health service providers not regulated by the Department. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108. Although this amendment may have a temporary impact on small businesses in that they may not bill at the higher fee schedule rate for their services until October 1, 2020, such an impact is outweighed by the need to give no-fault insurers time to study the impact the fee schedule changes will have on loss costs so they may appropriately adjust premiums to cover those costs.

2. Compliance requirements: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on any small businesses or self-insured local governments affected by this rule.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This amendment does not impose any additional compliance costs on small businesses or self-insured local governments.

5. Economic and technological feasibility: There should not be any issues pertaining to economic or technological feasibility because this rule only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use in no-fault pursuant to Insurance Law Section 5108.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments affected by this amendment because the amendment only delays the adoption of the most recent amendments to the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108. The Department anticipates that no small businesses subject to the rule, if any, or self-insured local governments will experience any cost increase because of this amendment.

7. Small business and local government participation: Interested parties, including small businesses and local governments, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined in State Administrative Procedure Act Section 102(10). Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment will not impose any additional reporting, recordkeeping or other compliance requirements on insurers, self-insurers, self-insured local governments, and health service providers affected by this rule.

Insurers, self-insurers, self-insured local governments, and health service providers affected by this rule should not need to retain professional services to comply with this rule. This rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

3. Costs: This amendment does not impose any additional costs on no-fault insurers, self-insurers, self-insured local governments, and health service providers, because this rule only delays for 18 months the adoption of the most recent amendments to the workers' compensation fee schedules, which are required to be utilized in the no-fault system pursuant to Insurance Law Section 5108.

4. Minimizing adverse impact: This rule uniformly affects insurers, self-insurers, self-insured local governments, and health service providers throughout New York State. Therefore, it does not impose any adverse impact on rural areas.

5. Rural area participation: Interested parties, including those located in rural areas, will be given an opportunity to review and comment on the rulemaking once it is published in the New York State Register.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. The amendment only delays for 18 months the adoption of the workers' compensation fee schedules for use pursuant to Insurance Law Section 5108.

Department of Health

NOTICE OF ADOPTION

Durable Medical Equipment; Medical/Surgical Supplies; Orthotic and Prosthetic Appliances; Orthopedic Footwear

I.D. No. HLT-42-18-00006-A
Filing No. 129
Filing Date: 2019-02-12
Effective Date: 2019-02-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 505.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 363-a(2); Public Health Law, section 201(1)(v)

Subject: Durable Medical Equipment; Medical/Surgical Supplies; Orthotic and Prosthetic Appliances; Orthopedic Footwear.

Purpose: To amend the Department's regulation governing Medicaid coverage of orthopedic footwear and compression and support stockings.

Text or summary was published in the October 17, 2018 issue of the Register, I.D. No. HLT-42-18-00006-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Cardiac Catheterization Laboratory Centers

I.D. No. HLT-09-19-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 405.29 and 709.14 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Cardiac Catheterization Laboratory Centers.

Purpose: To amend existing Certificate of Need requirements for the approval and operation of Cardiac Catheterization Laboratory Centers.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov/Laws&Regulations/Proposed Rulemaking): Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803(2)(a) of the Public Health Law, sections 709.14 and 405.29 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective after publication of Notice of Adoption in the New York State Register, to read as follows:

Section 709.14 (a) is amended to change the focus of need reviews for PCI services from being site specific to health system related and to reflect the transition from State Hospital Review and Planning Council to Public Health and Health Planning Council.

Section 709.14 (b) (2) is amended to reflect the increased prevalence of cardiac surgical services since the regulation was last amended.

Section 709.14 (b) (3) is amended to remove the requirement of a documented projected volume of 300 PCI cases within two years of approval to initiate an adult cardiac surgery center and replace it with a requirement for a documented projected volume of 36 emergency PCI cases within two years of approval.

Section 709.14 (d) is amended to differentiate between PCI capable cardiac catheterization laboratory centers at hospitals with no cardiac surgery on-site between (A) those hospitals that are co-operated with a hospital that is a cardiac surgery center and (B) those hospitals that have a clinical sponsorship with a cardiac surgery center. The regulation sets forth factors in determining public need for both. The amendment removes site specific total volume requirements and focuses remaining volume requirements on only emergency cases at the applicant facility. The amendment of this subdivision goes on to set forth requirements specific to co-operated and clinically affiliated applicants.

Section 405.29 (a)(4)(i) is amended to make a non-material edit for readability.

Section 405.29 (c)(8)(i) is amended to include language delineating clinical sponsorship agreements and the required provisions thereof.

Section 405.29 (d)(2)(i)(b) is amended to make a non-material edit for readability.

Section 405.29 (e)(1)(iv)(j) is amended to revise cardiac catheterization laboratory center structure and service requirements to allow for clinical sponsorship agreements.

Section 405.29 (e)(2)(ii)(c) is amended to allow a co-operated parent cardiac surgery center to report to the cardiac reporting system on behalf of a PCI capable cardiac catheterization laboratory center.

Section 405.29 (e)(2)(iii) differentiates requirements for co-operated and sponsored PCI capable cardiac catheterization laboratory centers.

Section 405.29(e)(2)(iv) eliminates previous total volume threshold requirements and establishes minimum volume requirements focusing exclusively on emergency cases. PCI centers with an annual volume below 150 percutaneous coronary intervention cases a year for two consecutive calendar years, or a volume below 36 emergency percutaneous coronary intervention cases a year for two consecutive calendar years will no longer be required to immediately surrender their approval or have it revoked. Instead, centers falling below those volume thresholds will be required to retain an independent physician consultant to conduct an annual appropriateness and quality review from which the Department will determine the disposition of the program.

Section 405.29 (e)(3) is clarified to reflect that no additional diagnostic cardiac catheterization services have been eligible for approval since the regulations were last amended on November 4, 2009.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 2800 and 2803(2) of the Public Health Law (PHL). In particular, PHL Section 2803 (2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of the state by requiring the efficient provision and proper utilization of health services, of the highest quality and at a reasonable cost.

Needs and Benefits:

Title 10 Health Codes Rules and Regulations (10 NYCRR) Section 709.14 provides standards to be used in evaluating certificate of need (CON) applications for cardiac catheterization laboratory and cardiac surgery services in hospitals located in New York State. Alongside 10 NYCRR Section 709.1, these regulations are intended as a set of planning principles and decision-making tools for directing the distribution of these services, with a goal of ensuring appropriate access to high quality services while avoiding the unnecessary duplication of resources. 10 NYCRR Section 405.29 provides standards for the provision of cardiac services.

Section 709.14 was last amended in November 2009 to allow the provision of Percutaneous Coronary Intervention (PCI) services (commonly referred to as angioplasty or stenting) outside of a Cardiac Surgery Center by defining and establishing a need methodology Cardiac Catheterization Laboratory Centers. The need methodology focused on the premise that a minimum volume of procedures at a facility ensures quality. Additional programs were deemed imprudent if they could not reasonably project certain volumes and unnecessary if their approval would cause an existing program at a facility in the same service area to fall below the minimum volume thresholds.

Since those last amendments, significant advances in technology and medical practice have made PCI and cardiac surgery procedures safer. In addition, standalone community hospitals are increasingly becoming part of integrated regional health care networks that are anchored by large academic medical centers. This transformation is increasing the potential for expanded access to quality cardiac care in these communities. Also, recent research by the University at Albany School of Public Health has shown that the correlation between volume and outcomes for PCI services has decreased in importance but that some minimal threshold is still needed.

The existing regulations have the effect of limiting new program entrants into geographic markets, and they are not aligned with the increasing prevalence of integrated regional health care systems that are operated and governed by large academic medical centers. Such systems improve the coordination and delivery of health care services and help improve quality and ensure the financial sustainability of community hospitals within the network. In such systems, the co-established parent hospital governs the member hospitals through its reserve powers. Several of these systems have achieved broad clinical integration, including joint clinical department heads, quality assurance and training programs, information systems with data exchange and the sharing of clinical and support staff such as specialty teams.

A Regulatory Modernization Initiative convened by the Department of Health in the Fall of 2017 solicited industry and stakeholder input, considered all the above factors, and made recommendations that form the basis for these amendments herein. The regulations, once promulgated, will form a new basis for cardiac catheterization program approval and operation. The result will be greater, more convenient access to safe, quality PCI services and perhaps lifesaving and more timely access to emergency PCI.

Hospitals approved as PCI Capable Cardiac Catheterization Laboratory Centers will be required to provide emergency PCI on a 24-hour, 7 day a week, 365 days a year basis. Such hospitals will also be required to provide data to the Cardiac Reporting System as those who already provide this care do now.

Costs:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

It is a voluntary choice for hospitals to provide these PCI services and not a mandate. There are approximately 66 hospitals that are currently PCI Capable Cardiac Catheterization Laboratory Centers out of 223 hospitals. The cost of implementation and compliance of these regulations is expected to be minimal for the affected entities already caring for these patients. Hospitals that voluntarily choose to provide such services, and that do not currently do so, will need to adhere to these standards and may incur costs to upgrade their services.

Cost to State and Local Government:

Any hospital in New York State that is part of State or local government that chooses to provide cardiac services will need to comply with these provisions. As discussed above, the cost of implementation and compliance of these regulations is expected to be minimal for entities already caring for these patients.

Cost to the Department of Health:

The Department of Health will need to monitor and provide surveillance and oversight for the system of care provided to these patients. It is not expected to incur any additional costs, as existing staff will be utilized to conduct such surveillance and oversight.

Local Government Mandates:

There are no local mandates within this regulatory amendment.

Paperwork:

Hospitals seeking to provide Cardiac Catheterization Laboratory Center Services with no Cardiac surgery onsite under the sponsorship model will be required to maintain a clinical sponsorship agreement with an existing Cardiac Surgery Center. Hospitals seeking to provide Cardiac Catheterization Laboratory Center Services with no Cardiac surgery onsite under the co-operator model will be required to maintain a staff sharing agreement with the parent Cardiac Surgery Center. Cardiac Surgery and Cardiac Catheterization Laboratory Centers will continue to be required to report data to the Department.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternatives:

The Department considered maintaining some lower total volume

thresholds of PCI procedures for approval of a new program as an incremental approach. However, given the weakening correlation between volume and outcomes for PCI services generally, any threshold, albeit lower, would still be somewhat arbitrary and problematic. Instead, to facilitate access to timely emergency PCI procedures, volume requirements for non-emergency procedures will be eliminated where the emergency PCI volume and standards associated with high quality care can be maintained.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

Three hospitals are considered small businesses (defined as 100 employees or less) and will be affected by this rule. Similarly, any hospital that is operated by a local government will be affected by this rule.

Compliance Requirements:

Those hospitals that are considered a small business will be required to have written transfer agreements in place with hospitals that will be receiving cardiac patients and with emergency medical services to transport these patients to the appropriate facility for definitive care in a timely and appropriate manner.

Professional Services:

This regulatory amendment does not appreciably change the professional services required to provide Cardiac Catheterization Laboratory Center Services.

Compliance Costs:

This regulatory amendment does not appreciably change the compliance costs associated with the provision of Cardiac Catheterization Laboratory Center Services.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

There is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties was conducted through the recent Regulatory Modernization Initiate Process. Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC) and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Achievement and Investment in Merit Scholarship (NY-AIMS)

I.D. No. ESC-09-19-00001-E

Filing No. 120

Filing Date: 2019-02-11

Effective Date: 2019-02-11

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of section 2201.16 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-g

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Purpose: To implement The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Text of emergency rule: New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

(a) Definitions. As used in section 669-g of the Education Law and this section, the following terms shall have the following meanings:

(1) "Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.

(2) "Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.

(3) "Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.

(4) "Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.

(b) Eligibility. An applicant must:

(1) have graduated from a New York State high school in the 2014-15 academic year or thereafter; and

(2) enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and

(3) have achieved at least two of the following during high school:

(i) Graduated with a grade point average of 3.3 or above;

(ii) Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or

(iii) Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and

(4) satisfy all other requirements pursuant to section 669-g of the education law; and

(5) satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.

(c) Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at

such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) request payment annually at such times, on forms and in a manner specified by the corporation;

(ii) receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and

(iii) provide any information necessary for the corporation to determine compliance with the program's requirements.

(e) Awards.

(1) The amount of the award shall be determined in accordance with section 669-g of the education law.

(2) Disbursements shall be made annually to institutions on behalf of recipients.

(3) Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 11, 2019.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer The New York State Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging $29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $2.5 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

EMERGENCY RULE MAKING

New York State Teacher Loan Forgiveness Program

I.D. No. ESC-09-19-00002-E

Filing No. 121

Filing Date: 2019-02-11

Effective Date: 2019-02-11

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of section 2201.21 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-j

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for loan forgiveness awards to be made to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. Eligible applicants will receive up to $5,000 per year for up to four years in loan forgiveness payments. Since individuals must apply after the completion the school year, which ends in June, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications and make payments timely. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Teacher Loan Forgiveness Program.

Purpose: To implement The New York State Teacher Loan Forgiveness Program.

Text of emergency rule: New section 2201.21 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.21 The New York State Teacher Loan Forgiveness Program.

(a) Definitions. For purposes of this section and Education Law, section 679-j, the following definitions shall apply:

(1) Award shall mean a New York State Teacher Loan Forgiveness Program award pursuant to section 679-j of the New York State Education Law.

(2) Corporation shall mean the New York State Higher Education Services Corporation.

(3) Department shall mean the New York State Education Department.

(4) Economically disadvantaged shall mean applicants whose household adjusted gross income is at or below 250 percent of the federal poverty level for the most recent calendar year available.

(5) Elementary and secondary school shall mean pre-kindergarten through grade 12 in a public or private school recognized by the board of regents of the university of the state of New York, including charter schools authorized pursuant to article 56 of the Education Law and programs provided by Boards of Cooperative Educational Services (BOCES) on behalf of such schools.

(6) Full time shall mean employment as a teacher in an elementary or secondary school in New York State for at least 10 continuous months, each school year, for a number of hours to be determined by either the school district, school board or school, the by-laws thereof, the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school, except for an allowable interruption of full time employment.

(7) Interruption of full time employment shall mean an allowable temporary leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, parental leave, medical leave, death of a family member, or military duty that exceeds forty-two calendar days, excluding legal holidays, regardless of whether such absence or leave is paid or unpaid.

(8) Household adjusted gross income shall mean the federal Adjusted Gross Income (AGI) for individuals or married couples filing jointly, or the aggregate AGI of married couples filing separately, reduced by a cost of living allowance, which shall be equal to the applicant's eligible New York State standard deductions plus their eligible New York State dependent exemptions for personal income tax purposes.

(9) Outstanding student loan debt shall mean the total cumulative student loan balance required to be paid by the applicant at the time of selection for an award under this program, including the outstanding principal and any accrued interest covering the cost of attendance to obtain an undergraduate or graduate degree from a college or university. Such outstanding student loan debt may be reduced as provided in subparagraph (iii) of paragraph (3) of subdivision (c) of this section.

(10) Program shall mean the New York State Teacher Loan Forgiveness Program.

(11) School year shall mean the period commencing on the first day of July in each year and ending on the 30th day of June next following.

(12) Teacher shall mean a New York State certified teacher providing instruction in an elementary or secondary school including enrichment and supplemental instruction that may be offered to a subset of students as well as support services such as counseling, speech and occupational therapy services.

(b) Eligibility. Applicants and recipients must:

(1) satisfy the requirements provided in section 679-j(2) of the Education Law. Recipients who continue to teach the same subject or in the same district, as the case may be, which qualified them for the award when they originally applied for this program remain eligible for subsequent award payments if the originally qualifying subject or district ceases to be designated as a subject shortage area or hard to staff district;

(2) be in a non-default status on a student loan made under any statutory New York State or federal education loan program or repayment of any award made pursuant to Article 14 of the Education Law; and

(3) be in compliance with the terms of any service condition imposed by an award made pursuant to article 14 of the Education Law.

(c) Administration.

(1) An applicant for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation on or before the date prescribed by the corporation; and

(ii) submit additional documentation evidencing eligibility, as requested by the corporation.

(2) A recipient of an award shall:

(i) confirm employment as a certified teacher each year on forms or in a manner prescribed by the corporation;

(ii) apply for payment annually on forms prescribed by the corporation; and

(iii) receive no more than five thousand dollars per year for not more than four years in duration, and not to exceed the total amount of such recipient's outstanding student loan debt as defined in paragraph (9) of subdivision (a) of this section.

(3) The outstanding student loan debt shall:

(i) include New York State student loans, federal government student loans, and private student loans for the purpose of financing undergraduate or graduate studies made by commercial entities subject to governmental examination.

(ii) exclude federal parent PLUS loans; loans cancelled under any program; private loans given by family or personal acquaintances; student loan debt paid by credit card; loans paid in full, or in part, before, on, or after the first successful application for program eligibility under this program; loans for which documentation is not available; loans without a promissory note; or any other loan debt that cannot be verified by the corporation.

(iii) be reduced by any reductions to student loan debt that an applicant has received or shall receive including voluntary payments made which reduces the balance owed.

(d) Award selection. All awards are contingent upon annual appropriations. Awards shall be distributed in accordance with Education Law, section 679-j(4). In the event there is insufficient funding to make awards within any given priority, recipients shall be chosen by lottery. In the event that a lottery is necessary, economically disadvantaged applicants and recipients who taught in a subject shortage area or hard to staff district during the prior school year but are not currently teaching in either a subject shortage area or a hard to staff district, will be given third priority.

(e) Revocation. Upon prior notice to a recipient, an award may be revoked by the corporation if the corporation determines that the recipient has failed to comply with the requirements to maintain their award, as evidenced by:

(1) a failure to apply for payment or reimbursement;

(2) a failure to respond to requests to contact or communication with the corporation;

(3) a failure to respond to a request for information; or

(4) any other information known to the corporation reasonably evidencing an indication of failure to comply with program requirements by a program participant.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 11, 2019.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer The New York State Teacher Loan Forgiveness Program (Program) is codified within Article 14 of the Education Law. Specifically, Part AA of Chapter 56 of the Laws of 2018 created the Program by adding a new section 679-j to the Education Law. Pursuant to subdivision 6 of section 679-j of the Education Law, HESC is required to promulgate rules and regulations for the administration of this Program.

Pursuant to Education Law § 652(2), HESC was established for improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs; the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of State student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

This Program was created to retain and/or increase the number elementary and secondary school teachers serving in New York State.

Needs and benefits:

Data from New York State United Teachers (NYSUT) suggests a teacher shortage is on the horizon for New York State, as well as nationally, due in part to many educators being on the verge of retirement (32 percent within the next 5 years) and a significant drop in recent years of students enrolling in teacher training programs (49 percent decrease since 2009). Further, approximately 10 percent of New York's teacher education graduates are leaving the state for employment elsewhere and 11 percent of New York teachers leave their school or profession annually; this number increases for early career teachers and those working in high-poverty areas. Former State University of New York (SUNY) Chancellor, Nancy Zimpher, predicts New York will need more than 180,000 new teachers in the next decade and the U.S. Department of Education projects New York's student enrollment will grow by 2 percent by 2024, with high-need school districts experiencing the largest increases.

In November 2013, the State Education Department (SED) reported the following statewide teacher shortage areas between 2010 and 2014: bilingual education, chemistry, career and technical education (CTE), earth science, English language learners, languages other than English, library and school media specialist, physics, special education, special education – bilingual, special education – science certification, and technology education. In New York City, SED identified shortage areas that include the arts, biology, chemistry, CTE, English, health education, library media specialist and mathematics. Evidence shows that New York's current teacher shortages are hitting urban and rural districts the hardest. At a meeting with NYSUT leaders, SED Commissioner MaryEllen Elia said finding ways to recruit and retain teachers must be front and center.

According to a report issued in August 2016 by the U.S. Department of Education and a report issued in May 2017 by the New York State School Board Association (NYSSBA), teacher shortages in New York are not widespread for all subject areas and geographical areas, but rather are concentrated in a handful of subjects and regions of the state, most notably science, special education, foreign languages, mathematics, and English instruction for students whose primary language is not English. In response, the Program is aimed at retaining and/or increasing the number of elementary and secondary teachers serving in hard to staff districts or subject shortage areas across the State by alleviating their student loan burden. Eligible recipients will receive up to $5,000 annually over four years.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. The estimated cost to the agency for the implementation of, or continuing compliance with, this rule is $341,850.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. Costs to the State shall not exceed available New York State budget appropriations for the Program. The 2018-19 State Budget contained an appropriation for this Program in the sum of $250,000.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or another special district.

Paperwork:

This proposal will require applicants to file an electronic web application to determine eligibility and an electronic application for each year they wish to receive an award payment for up to four years.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

Given the statutory language as set forth in section 679-j(6) of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal government.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or maintain careers as elementary and secondary school teachers throughout New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

HESC finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject ar-

eas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or remain in careers as elementary and secondary school teachers benefitting rural communities throughout New York State.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.21 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing loan forgiveness benefits to teachers serving in high need school districts or subject areas for which a shortage of teachers exits. Providing these benefits will encourage individuals to pursue and/or remain in careers as elementary and secondary school teachers throughout New York State.

EMERGENCY RULE MAKING

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-09-19-00003-E

Filing No. 122

Filing Date: 2019-02-11

Effective Date: 2019-02-11

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of section 2201.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-g

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Get on Your Feet Loan Forgiveness Program.

Purpose: To implement the New York State Get on Your Feet Loan Forgiveness Program.

Text of emergency rule: New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.15 New York State Get on Your Feet Loan Forgiveness Program.

(a) Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:

(1) "Adjusted gross income" shall mean the income used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan.

(2) "Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.

(3) "Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(4) "Delinquent" shall mean the failure to pay a required scheduled payment on a federal student loan within thirty days of such payment's due date.

(5) "Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(6) "Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.

(7) "Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.

(8) "Undergraduate degree" shall mean an associate or baccalaureate degree.

(b) Eligibility. An applicant must satisfy the following requirements:

(1) have graduated from a high school located in the State or attended an approved State program for a State high school equivalency diploma and received such diploma. An applicant who received a high school diploma, or its equivalent, from another state is ineligible for a Program award;

(2) have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;

(3) apply for this program within two years of obtaining such undergraduate degree;

(4) not have earned a degree higher than an undergraduate degree at the time of application;

(5) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;

(6) have income of less than fifty thousand dollars;

(7) comply with subdivisions three and five of section 661 of the education law;

(8) work in the State, if employed. A member of the military who is on active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;

(9) not be delinquent on a federal student loan or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and

(10) be in compliance with the terms of any service condition imposed by a New York State award.

(c) Administration.

(1) An applicant for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) A recipient of an award shall:

(i) request payment at such times, on such forms and in a manner as prescribed by the corporation;

(ii) confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;

(iii) notify the corporation of any change in his or her eligibility status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;

(iv) not receive more than twenty four payments under this program; and

(v) provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.

(d) Amounts and duration.

(1) The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment whose payment amount is generally ten percent of discretionary income and whose payment is based on income rather than loan debt.

(2) In the event the established monthly federal income-driven repayment plan payment is zero or the applicant is otherwise not obligated to make a payment, the applicant shall not qualify for a Program award.

(3) Disbursements shall be made to the entity that collects payments on the federal student loan or loans on behalf of the recipient on a monthly basis.

(4) A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(e) Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements, no longer qualifies for an award, or fails to respond to any request for information by the corporation.

(f) Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(g) Repayment. A recipient who is not a resident of New York State at the time a payment is made under this program shall be required to repay such payment or payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay to the corporation any payment made under this program that, at the time payment was made, should have been disqualified pursuant to subdivision (e). If a recipient is required to repay any payment or payments to the corporation, the following provisions shall apply:

(1) Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.

(2) The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.

(3) Repayment must be made within five years.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 11, 2019.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages $29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than $25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment. Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $5.2 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the U.S. Department of Education with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule

Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Commercial System Relief Program and Distribution Load Relief Program in the Authority's Tariff for Electric Service

I.D. No. LPA-09-19-00014-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Authority's Tariff for Electric Service.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: Commercial System Relief Program and Distribution Load Relief Program in the Authority's Tariff for Electric Service.

Purpose: To update the Tariff to allow incentives for a behind-the-meter battery storage program from PSEG Long Island's Utility 2.0 Plan.

Public hearing(s) will be held at: 10:00 a.m., April 29, 2019 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., April 29, 2019 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Long Island Power Authority (the "Authority") staff proposes to revise the Authority's Tariff for Electric Service to enable incentives in support of PSEG Long Island's planned behind-the-meter energy storage program. The incentives will be offered through the Authority's existing dynamic load management tariffs.

Each year, PSEG Long Island submits an annual update to its Utility 2.0 Long Range Plan, in which it proposes new initiatives to enhance the customer experience, modernize the Long Island electric grid, and promote New York State's Reforming the Energy Vision policies. As part of its 2018 Utility 2.0 annual update, filed on June 29, 2018, PSEG Long Island proposed to introduce an innovative, open solicitation program opportunity for third-party aggregators to install behind-the-meter batteries for PSEG Long Island customers.[1] The goal of the program is to catalyze the local availability of energy storage for the commercial and residential market while providing load relief, especially in those defined areas of the grid where peak demand needs are most critical. On November 1, 2018, the Department of Public Service ("DPS") recommended adoption of PSEG Long Island's behind-the-meter battery program.[2]

The Authority's existing Dynamic Load Management ("DLM") programs include a peak load-shaving Commercial System Relief Program (the "CSRP") and a local reliability supporting Distribution Load Relief Program (the "DLRP"). The behind-the-meter battery program will make use of the Authority's existing CSRP and DLRP tariffs to offer incentives for qualifying battery storage equipment. This proposal will modify those tariffs consistent with the behind-the-meter battery program to enable incentives in support of the Utility 2.0 behind-the-meter battery storage program to be paid through the Authority's existing CSRP and DLRP tariffs.

[1] Case No. 14-01299, In the Matter of PSEG-LI Utility 2.0 Long Range Plan, Item No. 48.

[2] Case No. 14-01299, In the Matter of PSEG-LI Utility 2.0 Long Range Plan, Item No. 57.

Text of proposed rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: tariffchanges@lipower.org

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

NOTICE OF ADOPTION

Electric Vehicle Supply Equipment and Infrastructure

I.D. No. PSC-21-18-00044-A

Filing Date: 2019-02-07

Effective Date: 2019-02-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order adopting, with modifications, the Consensus Proposal establishing the framework for a Direct Current Fast Charging (DCFC) Infrastructure Program.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Electric vehicle supply equipment and infrastructure.

Purpose: To adopt, with modifications, the Consensus Proposal establishing the framework for a DCFC Infrastructure Program.

Sustance of final rule: The Commission, on February 7, 2019, adopted an order adopting, with modifications, the Consensus Proposal, filed by Consolidated Edison Company of New York, Inc., Central Hudson Gas & Electric Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, New York Power Authority, New York State Department of Environmental Conservation, New York State Department of Transportation, New York State Energy Research and Development Authority and the New York State Thruway Authority, establishing the framework for a Direct Current Fast Charging Infrastructure Program, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0138SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-39-18-00004-A
Filing Date: 2019-02-07
Effective Date: 2019-02-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to P.S.C. No. 3—Electricity, to establish its Rider J—Smart Home Rate Demonstration (SHR Demo) Project.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve, with modifications, O&R's tariff amendments to establish its SHR Demo Project.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to P.S.C. No. 3—Electricity, to establish its Rider J—Smart Home Rate Demonstration Project. The tariff amendments listed in Appendix A shall become effective on March 1, 2019, provided that O&R files further revisions as discussed in the body of this Order on not less than five days' notice to become effective on March 1, 2019, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0549SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-39-18-00006-A
Filing Date: 2019-02-07
Effective Date: 2019-02-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments to P.S.C. No. 10—Electricity, to establish its Rider AB—Smart Home Rate Demonstration (SHR Demo) Project.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve, with modifications, Con Edison's tariff amendments to establish its SHR Demo Project.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments to P.S.C. No. 10—Electricity, to establish its Rider AB—Smart Home Rate Demonstration Project. The tariff amendments listed in Appendix A shall become effective on March 1, 2019, provided that Con Edison files further revisions as discussed in the body of this Order on not less than five days' notice to become effective on March 1, 2019, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0548SA1)

NOTICE OF ADOPTION

Termination of MSPs and MDSPs Programs

I.D. No. PSC-40-18-00013-A
Filing Date: 2019-02-08
Effective Date: 2019-02-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order terminating the Meter Service Providers (MSPs) and the Meter Data Service Providers (MDSPs) Programs and all associated certificates.

Statutory authority: Public Service Law, sections 2, 5, 39, 44, 47, 65, 66, 67 and 89-d

Subject: Termination of MSPs and MDSPs Programs.

Purpose: To terminate the MSPs and MDSPs Programs and all associated certificates.

Substance of final rule: The Commission, on February 7, 2019, adopted an order terminating the Meter Service Provider (MSPs) and Meter Data Service Provider (MDSPs) programs, as established by order issued on January 31, 2001, in Case 00-E-0165, et al., as discussed in the body of this Order, effective as of the date this Order is issued. All certifications granted through the MSPs and MDSPs programs shall be canceled and deemed void as of the date this Order is issued, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-E-0595SA1)

NOTICE OF ADOPTION

Financing Petition for Issuance of Long-term Debt Securities

I.D. No. PSC-40-18-00019-A
Filing Date: 2019-02-08
Effective Date: 2019-02-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order authorizing, subject to conditions, KeySpan Gas East Corporation d/b/a National Grid (KEDLI) to issue and sell up to $400 million of new long-term debt securities through March 31, 2022.

Statutory authority: Public Service Law, section 69

Subject: Financing petition for issuance of long-term debt securities.

Purpose: To authorize KEDLI to issue and sell up to $400 million of new long-term debt securities through March 31, 2022.

Substance of final rule: The Commission, on February 7, 2019, adopted an order authorizing KeySpan Gas East Corporation d/b/a National Grid (KEDLI) to issue and sell up to $400 million of new long-term debt securities, in one or more transactions, not later than March 31, 2022. The proceeds from the issuance of these securities shall only be used for the purposes described in Ordering Clause 2. This order replaces the authorization granted in the Order Authorizing Issuance of Securities, issued December 17, 2015, in Case 15-G-0308 and the authorization granted in that proceeding is revoked, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-G-0558SA1)

NOTICE OF ADOPTION

Financing Petition for Issuance of Long-Term Debt Securities

I.D. No. PSC-40-18-00020-A
Filing Date: 2019-02-08
Effective Date: 2019-02-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order authorizing, subject to conditions, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to issue and sell up to $1.4 billion of new long-term debt securities through March 31, 2022.

Statutory authority: Public Service Law, section 69

Subject: Financing petition for issuance of long-term debt securities.

Purpose: To authorize KEDNY to issue and sell up to $1.4 billion of new long-term debt securities through March 31, 2022.

Substance of final rule: The Commission, on February 7, 2019, adopted an order authorizing The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to issue and sell up to $1.4 billion of new long-term debt securities, in one or more transactions, not later than March 31, 2022. The proceeds from the issuance of these securities shall only be used for the purposes described in Ordering Clause 2. This order replaces the authorization granted in the Order Authorizing Issuance of Securities, issued December 17, 2015, in Case 15-G-0309 and the authorization granted in that proceeding is revoked, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-G-0559SA1)

NOTICE OF ADOPTION

Internal Reorganization and a Stock Transfer

I.D. No. PSC-41-18-00004-A
Filing Date: 2019-02-08
Effective Date: 2019-02-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving Suez Water New York Inc. (SWNY), et. al.'s petition for an internal reorganization and a stock transfer.

Statutory authority: Public Service Law, section 89-h

Subject: Internal reorganization and a stock transfer.

Purpose: To approve SWNY et al.'s petition for an internal reorganization and a stock transfer.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving SUEZ Water New York Inc. (SWNY), Suez Water Westchester Inc. (SWW), Suez Water Owego-Nichols Inc. (SWON), SUEZ Water Resources Inc. (SWR), and Stichting Depositary PGGM Infrastructure Funds' (PGGM, and collectively Petitioners) petition for an internal reorganization of the Suez companies, involving transforming SWR from a corporation to a limited liability company (LLC); arranging SWR's direct ownership of all the New York Suez operating companies; establishing a new holding company (NewCo) between SWR and its parent SUEZ Water Inc.(SWI); and transferring a 20% interest in NewCo to PGGM for consideration of $601 million. SWI is authorized to implement its corporate restructuring, including the elimination of Suez Water New Jersey from the ownership structure of Suez Water New York, pursuant to Public Service Law § 89-h. Within 30 days after execution of the approved restructuring and transfer of a 20% interest in NewCo to PGGM Infrastructure Funds, the Petitioners shall inform the Secretary to the Commission in writing that the internal reorganization and the transfer are complete, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-W-0567SA1)

NOTICE OF ADOPTION

Long-Term Loan Agreement

I.D. No. PSC-41-18-00005-A
Filing Date: 2019-02-08
Effective Date: 2019-02-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order authorizing Fishers Island Water Works Corporation's (Fishers Island) request to enter into a 20-year fixed rate loan agreement with CoBank, ABC of Colorado (CoBank) and to borrow up to $980,000.

Statutory authority: Public Service Law, section 89-f

Subject: Long-term loan agreement.

Purpose: To authorize Fishers Island to enter into a 20-year fixed rate loan agreement with CoBank.

Substance of final rule: The Commission, on February 7, 2019, adopted an order authorizing Fishers Island Water Works Corporation's (Fishers Island) request to enter into a 20-year loan agreement with CoBank, ACB of Colorado, to borrow up to $980,000 (2018 Credit Facility) of principal debt for the purpose of funding a number of capital improvement projects (System Improvement Plan) at an estimated cost of $710,000 and repayment in full of the approximate $270,000 remaining balance of its current 10-year loan agreement (2016 Credit Facility) with Bank Rhode Island. Fishers Island's request to implement a customer surcharge to recover the debt service associated with the system improvement portion of the 2018 Credit Facility is denied, and instead a system improvement charge (SIC) mechanism to allow Fishers Island to recover the carrying costs of its system improvement projects before its next base rate proceeding is approved, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-W-0566SA1)

NOTICE OF ADOPTION

Tariff Revisions Regarding Temperature Controlled (TC) and Interruptible (IT) Customers

I.D. No. PSC-44-18-00010-A
Filing Date: 2019-02-07
Effective Date: 2019-02-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving The

Brooklyn Union Gas Company d/b/a National Grid (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff revisions and directed further tariff filings.

Statutory authority: Public Service Law, sections 5, 65 and 66(12)

Subject: Tariff revisions regarding temperature controlled (TC) and interruptible (IT) customers.

Purpose: To approve KEDNY and KEDLI's tariff revisions and direct further tariff filings.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff revisions to modify the tariff provisions that allow the Companies to impose penalties on the unauthorized use of gas by temperature controlled (TC) and interruptible (IT) customers and directed the Companies to file proposed tariff revisions to create and/or revise their current non-firm service classes to blend the existing TC and IT services into a single service class with two tiers for each service territory. KEDNY and KEDLI are directed to file tariff amendments consistent with the discussion in the body of this Order to impose unauthorized use of gas penalties at the lower of two times the sum of the market price plus the transportation rate, or nine times the applicable sales rate to become effective March 1, 2019, on not less than seven days' notice. KEDNY and KEDLI are directed to file proposed tariff revisions to create and/or revise their current non-firm service classes to blend the existing TC and IT services and implement two pricing tiers determined by a customer's switching equipment, within 90 days from the date of issuance of this Order. KEDNY and KEDLI are directed to file proposed tariff revisions that address the submitted written comments and concerns for the treatment of critical customers in Case 18-G-0565, and Staff's proposed solutions discussed at the IT service technical conference on November 27, 2018, within 90 days from the date of issuance of this Order. KEDNY and KEDLI are also directed to file tariff amendments, consistent with the discussion in the body of this Order, to end the existing moratorium on new TC customers to become effective March 1, 2019, on not less than seven days' notice, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

16-G-0058SA6

NOTICE OF ADOPTION

Non-Pipeline Solutions Portfolio in the Smart Solutions for Natural Gas Customers Program

I.D. No. PSC-44-18-00015-A

Filing Date: 2019-02-07

Effective Date: 2019-02-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s (Con Edison) petition implementing the Non-Pipeline Solutions Portfolio.

Statutory authority: Public Service Law, sections 5, (2), 65 and 66

Subject: Non-Pipeline Solutions Portfolio in the Smart Solutions for Natural Gas Customers Program.

Purpose: To approve, with modifications, Con Edison's petition implementing the Non-Pipeline Solutions Portfolio.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s petition implementing the Non-Pipeline Solutions Portfolio in the Smart Solutions for Natural Gas Customers Program, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(17-G-0606SA4)

NOTICE OF ADOPTION

Request for Maintenance Support

I.D. No. PSC-47-18-00004-A

Filing Date: 2019-02-08

Effective Date: 2019-02-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving Ampersand Cranberry Lake Hydro LLC's (Ampersand Hydro) petition for a maintenance tier contract to support continued operations of its facility located in the Town of Clifton, New York.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2), 65(1), 66(1), (2), (5); Energy Law, section 6-104(5)(b)

Subject: Request for maintenance support.

Purpose: To approve Ampersand Hydro's petition or a maintenance tier contract to support continued operations of its facility.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving Ampersand Cranberry Lake Hydro LLC's (Ampersand Hydro) petition for a maintenance tier contract to support continued operations of its 500 kilowatt (kw) run-of-river hydroelectric power generation station (Facility) located in the Town of Clifton, New York. The New York State Energy Research and Development Authority (NYSERDA) is authorized to enter into a three-year maintenance resource contract with Ampersand Hydro to provide financial support to maintain operations of the facility. Ampersand Hydro is offered a three-year Tier 2 maintenance resource contract under the Renewable Energy Standard, with a maintenance award for the purchase of Renewable Energy Credits priced up to $18.77 per MWh on up to 1,786 MWh of energy generated annually at its facility. The three-year term will begin on either April 1, 2019, or the month following the completion of the capital projects included in the petition, whichever is later, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(17-E-0603SA5)

NOTICE OF ADOPTION

Limited Waivers Pertaining to Cable Television Franchise

I.D. No. PSC-47-18-00005-A

Filing Date: 2019-02-11

Effective Date: 2019-02-11

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: On 2/7/19, the PSC adopted an order approving Frontier's petition for certain waivers of 16 NYCRR Parts 890 and 895, in connection with its Certificate of Confirmation for a cable television franchise with the Town of Crawford, Orange County.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Limited waivers pertaining to cable television franchise.

Purpose: To approve Frontier's petition for limited waivers of 16 NYCRR, Parts 890 and 895.

Substance of final rule: The Commission, on February 7, 2019, adopted an order approving Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York's (Frontier) petition for limited waivers of 16 NYCRR, Parts 890 and 895 of the Commission's rules, in connection with a Certificate of Confirmation for a cable television franchise in the Town of Crawford, Orange County, subject to the terms and conditions set forth in the order.

Final rule as compared with last published rule: No changes.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-V-0630SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-09-19-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the notice of intent of 16 Sheridan Avenue LLC to submeter electricity at 16 Sheridan Avenue, Albany, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of intent to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by 16 Sheridan Avenue LLC on February 4, 2019, to submeter electricity at 16 Sheridan Avenue, Albany, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid).

By stating its intent to submeter electricity, 16 Sheridan Avenue LLC requests authorization to take electric service from National Grid and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-E-0070SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Exemptions from Standby Rates

I.D. No. PSC-09-19-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the City of New York's Petition for a Declaratory Ruling Regarding Consolidated Edison Company of New York, Inc.'s Standby Rate Exemptions Under Its Steam and Electric Service Tariffs.

Statutory authority: Public Service Law, sections 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Exemptions from standby rates.

Purpose: To consider whether the standby rate exemptions proposed by the City of New York are reasonable and in the public interest.

Substance of proposed rule: The Public Service Commission is considering the City of New York's Petition for a Declaratory Ruling Regarding Consolidated Edison Company of New York, Inc.'s Standby Rate Exemptions Under Its Steam and Electric Service Tariffs (Petition), filed December 10, 2018.

The petition explains that the New York City Health and Hospitals Corporation is developing a 4.2 MW combined heat and power facility within the service territory of Consolidated Edison Company of New York, Inc. to service NYC Health + Hospitals/Bellevue. The petition requests that the Commission issue a ruling that: (1) applies the Targeted Exemption from standby rates described in Con Edison's Electric Tariff to Con Edison steam customers, and also extends the Targeted Exemption's project in-service deadline to at least June 30, 2022; and (ii) extends the Electric Service Tariff's Designated Technologies Exemption, which already applies to steam customers, project in-service date to at least June 30, 2022.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-M-0739SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Exemptions from Standby Rates

I.D. No. PSC-09-19-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering whether previously established temporary exemptions from standby rates for certain forms of beneficial distributed generation, as well as for efficient combined heat and power projects, should be continued.

Statutory authority: Public Service Law, sections 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Exemptions from standby rates.

Purpose: To determine whether standby rate exemptions should be continued.

Substance of proposed rule: The Commission is considering whether previously established temporary exemptions from standby rates for certain forms of beneficial distributed generation, as well as for efficient combined heat and power projects, should be continued as detailed in the Notice Initiating Proceeding and Soliciting Comments (Notice) filed on February 12, 2019.

As explained in the notice, the exemptions were established in 2003 and were renewed several times with modifications, most recently in 2015. The exemptions are currently scheduled to expire on May 31, 2019, absent Commission action. The exemptions allow certain customers who would otherwise be required to take standby service to instead choose to remain on standard tariff rates.

The full text of the notice and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-E-0079SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendments to the Tariff of Con Edison Pertaining to Interruptible Gas Service Customers

I.D. No. PSC-09-19-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition for rehearing, filed by the City of New York on January 14, 2019, of the Commission's Order Approving In Part Tariff Amendments issued on December 14, 2018.

Statutory authority: Public Service Law, sections 2, 5(1), (2), 22, 53, 65, 66(1), (2), (3), (5) and (12)

Subject: Amendments to the tariff of Con Edison pertaining to interruptible gas service customers.

Purpose: To consider the appropriate tariff provisions for Con Edison interruptible gas service customers.

Substance of proposed rule: On January 14, 2019, the City of New York (City) filed a Petition for Rehearing (Petition) of an Order (Order) Approving In Part Tariff Amendments filed by Consolidated Edison Company of New York, Inc. (ConEd), issued December 14, 2018 in this proceeding. The petition alleges that the Order erred as a matter of law pursuant to 16 NYCRR § 3.7(b).

In the petition, the City objects to new requirements and potential penalties in ConEd's gas service tariff (P.S.C. No. 9) applicable to interruptible gas service customers. Specifically, the City contends that the Order contemplates that either the Commission or ConEd would assess damages as between utility customers and that the Commission lacked authority to provide for such assessments. The City further alleges that the procedures envisioned by the Order for the assessment of such damages are insufficient to afford interruptible gas service customers due process. The City also alleges that the Order would impose upon interruptible gas service customers a stricter standard of liability than that which applies to utilities.

The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the request, modify or reverse the decision in granting the request in whole or in part, or take such other or further action as it deems necessary with respect to the request. However, the Commission will limit its review to the issues raised by the above-referenced request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-G-0565SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Non-Pipeline Alternatives Report Recommendations

I.D. No. PSC-09-19-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the recommendations proposed in the Non-Pipeline Alternatives Collaborative Report filed on December 21, 2018 by Niagara Mohawk Power Corporation d/b/a National Grid.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Non-pipeline alternatives report recommendations.

Purpose: To consider the terms and conditions applicable to gas service.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Non-Pipeline Alternatives (NPAs) Collaborative Report (Report) filed on December 21, 2018 by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Company).

In its Order Adopting the Terms of a Joint Proposal and Establishing a Gas Rate Plan, issued March 15, 2018 in Case 17-G-0239, the Commission required that National Grid convene a collaborative to consider mechanisms, targets, and appropriate financial incentive mechanisms for NPAs that are focused on improving the efficiency and operation of the Company's natural gas system, and file a report to the Secretary to the Commission. The collaborative was required to consider solutions using new and existing technologies, and any recommended incentive was required, on a project basis, to have: (i) an overall positive net benefit-cost analysis (BCA), and (ii) a reduction to fossil fuel usage and/or the elimination of fossil fuel usage during peak periods.

The report presents the collaborative's findings and recommends the Commission adopt an NPA incentive mechanism. The mechanism would allow National Grid to retain a portion of net benefits achieved through the implementation of an NPA.

The full text of the report and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(17-G-0239SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Request a Waiver of the Requirements of PSL Section 66-j(4)(c) Regarding the Annual Payout Process for Excess Generation

I.D. No. PSC-09-19-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation to modify its electric tariff schedule, P.S.C. No. 15, regarding the annual payout process for certain net metering customers pursuant to PSL section 66-j(4)(c).

Statutory authority: Public Service Law, sections 65, 66 and 66-j(4)(c)

Subject: To request a waiver of the requirements of PSL section 66-j(4)(c) regarding the annual payout process for excess generation.

Purpose: Efficiency improvements to the annual payout process for excess generation.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson or the Company) on January 25, 2019, to amend its electric tariff schedule, P.S.C. No. 15.

Central Hudson requests a waiver of the requirements of Public Service Law § 66-j(4)(c), which requires utilities to issue payment to the customer at its avoided cost for excess generation remaining at the end of the year or the annualized period for service supplied by net energy metering customers. Central Hudson proposes revisions to General Information Section 38 – Net Metering for Customer Generators, to modify the annual payout process for excess generation credits less of than $100 remaining at the end of the year or the annualized period. For credits of less than $100, the Company proposes to issue payments via bill credits for the succeeding period unless the customer requests a refund. Central Hudson is not proposing to modify its payment process for credits greater than $100. The proposed amendments have an effective date of June 1, 2019.

The full text of the proposal and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-E-0057SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Certain Rules, i.e., 5-Year Buildout and 7-Day Installation Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-09-19-00012-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition for certain waivers filed by Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York in connection with a cable television franchise for the Town of Highland, Sullivan County.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules, i.e., 5-year buildout and 7-day installation requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any rules and regulations.

Substance of proposed rule: The Commission is considering a petition, filed on January 14, 2019 by Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York (Frontier) for approval of its certificate of confirmation (certificate) for a cable television franchise with the Town of Highland, Sullivan County.

The certificate, if approved, will enable Frontier to offer advanced broadband services and provide a competitive wireline cable alternative to the monopoly wireline cable provider to some residents of the Town. In addition to facilitating cable competition in certain areas, the proposed franchise agreement would promote broadband deployment at speeds up to 100MBps and potentially lead to additional network build-out opportunities.

In connection with the proposed cable television franchise, Frontier requested waivers and/or partial waivers of certain cable franchise requirements found in 1) 16 NYCRR § 895.5(b)(1) and 895.5(c), which requires a five-year build-out of the primary service area; and 2) 16 NYCRR § 895.5(b)(3) and 890(b)(1), which establishes a seven-business day installation interval for providing service to certain dwellings.

Frontier submits that the requested waivers are necessary for a new entrant to the market, like Frontier, to compete against well-entrenched cable providers that have existing customer bases and substantially higher market capitalizations than Frontier. Frontier further submits that the requested waivers mitigate the risks and challenges associated with competing with an incumbent service provider with a 100% market share.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(19-V-0040SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Cyber Security Requirements

I.D. No. PSC-09-19-00013-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition filed by the Joint Utilities that would establish cyber security standards for entities with whom the utilities electronically exchange data.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5) and (8)

Subject: Cyber Security requirements.

Purpose: Establish a framework to ensure the protection of utility systems and customer data from cyber events.

Substance of proposed rule: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d/b/a National Grid and The Brooklyn Union Gas Company d/b/a National Grid NY, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (collectively, the Joint Utilities) on February 4, 2019, to establish cyber security standards for entities with whom the utilities electronically exchange data (Joint Utility Petition).

The Joint Utilities propose that these cyber security standards be applicable to any entity that electronically exchanges data with the utility, including energy service companies (ESCO), distributed energy resource suppliers (DERS), direct customers, and their applicable contractors (collectively, Energy Service Entities or ESEs).

The Joint Utility Petition requests that the Commission first affirm the collaborative, business-to-business process that was utilized to negotiate and develop the current Data Security Agreement (DSA) and its accompanying Self-Attestation (SA). Second, the Joint Utilities request that the Commission adopt specific standard cyber security provisions included in the DSA and SA, including provisions dealing with: (1) compliance with the Uniform Business Practices for ESCOs and DERS; (2) the transfer of information; (3) confidentiality of utility, provider, and customer information; (3) return and destruction of information; (5) responsibility and liability for data security incidents; (6) cyber security insurance; (7) minimum cyber security requirements; (8) means to determine whether ESEs have and maintain minimum levels of cyber security; and (9) indemnification. Third, the Joint Utilities propose to prohibit ESEs electronic access to utility information technology systems, as well as customer data, unless they satisfactorily complete a DSA. The Joint Utilities also request that the Commission adopt a framework for further development of the DSA, which is expected to evolve as technology and cyber security standards evolve.

In addition to the Joint Utilities' February 4, 2019 petition, the Commission may resolve three other related petitions, all of which deal with cyber security and DSA issues and were referred to in the Joint Utility Petition. The first of these petitions is a Joint Utility request for a declaratory ruling filed on November 8, 2018 in cases 98-M-1343 and 18-M-0376 (JU Declaratory Ruling Petition). The JU Declaratory Ruling Petition seeks confirmation that a distribution utility may discontinue an ESCO's participation in the utility's retail access program pursuant to Section 2.F. of the Uniform Business Practices if the ESCO fails to meet minimum data security standards, including execution of a DSA.

The second is a request for clarification filed by the Joint Utilities on November 21, 2017 in case 15-M-0180 (JU Request for Clarification). The JU Request for Clarification seeks clarification on the Commission's Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers issued on October 19, 2017 (DER Oversight Order). Specifically, the Joint Utilities request the Commission to clarify that Section 2.C. of the UBP-DERS apply to DERS who are seeking to obtain customer data, regardless of the utility platform involved, so that the necessary rules for obtaining consent, among other things, apply across all platforms, not only to the Electronic Data Interchange (EDI) platform.

The third related petition that the Commission may resolve is the request for a declaratory ruling filed by Mission:data Coalition on November 30, 2018 in case 18-M-0376 (Mission:data Declaratory Ruling Petition). Like the JU Request for Clarification, the Mission:data Declaratory Ruling Petition seeks interpretation of the Commission's DER Oversight Order. Specifically, Mission:data requests that the Commission affirm that the DER Oversight Order specifically prohibits the utilities from requiring DERS that utilize Green Button Connect (GBC) to sign a DSA as a prerequisite to receive customer data.

The full text of the proposal and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(18-M-0376SP1)

Department of Taxation and Finance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Congestion Surcharge

I.D. No. TAF-09-19-00005-EP

Filing No. 126

Filing Date: 2019-02-12

Effective Date: 2019-02-12

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Proposed Action: Addition of Part 700 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 1096(a), art. 29-C

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Specific reasons underlying the finding of necessity: Pursuant to Article 29-C of the Tax Law, a surcharge is in effect, beginning January 1, 2019, on certain intrastate for-hire transportation that begins in, ends in, or passes through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer this surcharge, and to accept the registration of persons liable for the surcharge.

This rule is being readopted on an emergency basis and proposed as a permanent rule so that persons liable for the congestion surcharge can timely register, and ensure that proper transportation records are kept, beginning January 1, 2019.

Subject: Congestion Surcharge.

Purpose: To implement the Congestion Surcharge and related registration, recordkeeping and reporting requirements.

Substance of emergency/proposed rule (Full text is posted at the following State website: tax.ny.gov): Tax Law Article 29-C mandates the payment of a surcharge, effective January 1, 2019, on the provision of certain intrastate for-hire transportation that begins in, ends in, or passes through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The provisions of Article 29-C require, among other things, that persons liable for the congestion surcharge register with the Commissioner of Taxation and Finance and keep records of the transportation they are responsible for.

This rule adds a new Subchapter E (section 700.1 through section 700.4) to Chapter IV of Title 20 NYCRR. Section 700.1 contains definitions that are applicable throughout Subchapter E, while section 700.2 reflects the imposition of the congestion surcharge. Section 700.3 sets forth registration and renewal requirements (including the payment of fees) for persons liable for the surcharge. Finally, section 700.4 identifies the types of records and information that must be kept, how they must be kept and transmitted, and who is responsible for keeping them (i.e., persons liable for the congestion surcharge).

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 12, 2019.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Tax Regulations Specialist II, Department of Taxation and Finance, Office of Counsel, Room 200, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: kathleen.chase@tax.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 1096(a) of the Tax Law generally authorizes the Commissioner to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of Article 27 of the Tax Law; section 1299-G of Article 29-C of the Tax Law states that the provisions of Article 27 of the Tax Law apply with respect to the administration of and procedure with respect to the congestion surcharge; section 1299-A of Article 29-C of the Tax Law imposes a surcharge on for-hire transportation trips that begin in, end in, or pass through the geographic area of the city of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"); Article 29-C of Tax Law requires the Commissioner to administer the congestion surcharge, and to accept the registration of persons liable for the surcharge. Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. Section 1299-E of Article 29-C requires records to be kept by persons liable for the surcharge.

2. Legislative objectives: New Subchapter E (section 700.1 through section 700.4) of Chapter IV of Title 20 NYCRR reflects the imposition of the congestion surcharge. Subchapter E implements the registration and administration requirements of Article 29-C of the Tax Law. Section 700.1 of Subchapter E contains definitions that are applicable throughout Subchapter E, while section 700.2 reflects the imposition of the congestion surcharge. Section 700.3 sets forth registration and renewal requirements (including the payment of fees) for persons liable for the surcharge. Finally, section 700.4 identifies the types of records and information that must be kept, how they must be kept and transmitted, and who is responsible for keeping them (i.e., persons liable for the congestion surcharge).

3. Needs and benefits: This rule sets forth the renewal and registration

requirements necessary to comply with Article 29-C, as well as the records that must be kept to accomplish compliance with Article 29-C. This rule benefits taxpayers by putting in place the means for complying with the congestion surcharge effective January 1, 2019.

4. Costs:

(a) Costs to regulated parties for the implementation and continuing compliance with this rule: There is no additional cost or burden to comply with these amendments. There is no additional time period needed for compliance.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Sales and Use and Other Miscellaneous Tax Regulations under Article 29-C of the Tax Law arises due to the statutory changes requiring that the Commissioner administer the congestion surcharge, and accept the registration of those who will be liable for the surcharge, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: There are no costs or burdens imposed on local governments to comply with this amendment.

6. Paperwork: This rule will not require any new forms or information. The rule merely implements the registration, renewal and recordkeeping requirements of Article 29-C of the Tax Law.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since Article 29-C, as added by Part NNN of Chapter 59 of the Laws of 2018, requires that the Commissioner administer the congestion surcharge, and prescribes renewal, registration and recordkeeping requirements, there are no viable alternatives to providing for registration, renewal and recordkeeping procedures and methods.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: The required registration, renewal and recordkeeping information has been made available to regulated parties, by means of the emergency adoption of New Subchapter E of the Sales and Use and Other Miscellaneous Tax Regulations on November 19, 2019, in sufficient time for affected parties to comply with the congestion surcharge effective January 1, 2019. This rule readopts the amendments relating to the congestion surcharge as an emergency measure and proposes them as a permanent rule, in order to maintain the effectiveness of the amendments and permit continuing compliance with the requirements of Article 29-C of the Tax Law.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of persons liable for surcharge.

Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. The rule implements section 1299-C by setting forth registration and renewal requirements. Section 1299-E of Article 29-C requires records to be kept by persons liable for the surcharge. The rule implements section 1299-E by enumerating those records to be kept by persons liable for the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of persons liable for the surcharge.

Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. The rule implements section 1299-C by setting forth registration and renewal requirements. Section 1299-E of Article 29-C requires records to be kept by those liable for the surcharge. The rule enumerates those records to be kept by persons liable for the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

The purpose of the rule is to add a new Subchapter E to 20 NYCRR, to implement Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018. Article 29-C generally imposes a surcharge on for-hire transportation that begins in, ends in, or passes through the geographic area of the City of New York, in the borough of Manhattan, south of and excluding 96th Street (the "congestion zone"). The Commissioner is required to administer the congestion surcharge imposed by Article 29-C, and to accept the registration of persons liable for the surcharge.

Section 1299-C of Article 29-C requires that persons liable for the congestion surcharge file with the Commissioner a completed application for a certificate of registration, in a form prescribed by the Commissioner, subject to renewal in accordance with rules promulgated by the Commissioner. Section 1299-E of Article 29-C requires records to be kept by persons liable for the surcharge. The rule enumerates those records to be kept by persons liable for the surcharge. Without a recordkeeping requirement, it would be impossible to ensure compliance with section 1299-A of Article 29-C, which imposes the congestion surcharge.

This rule merely complies with the mandates of Article 29-C of the Tax Law, as added by Part NNN of Chapter 59 of the Laws of 2018, by adding a new Subchapter E to 20 NYCRR, setting forth renewal, registration and recordkeeping requirements relating to the congestion surcharge.